



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tas-6 ta' April, 2022

Appell Inferjuri Numru 125/2021 LM

Djilali Douib (K.I. nru. 19940A)
(l-appellant')

vs.

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

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mill-appellant **Djilali Douib (K.I. nru. 19940A)** [minn issa 'l quddiem 'l-appellant'] mid-deċiżjoni tal-1 ta' Novembru, 2021, [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-appellat'] għar-raġunijiet hemm imfissra.

Fatti

2. Il-fatti tal-appell odjern jirrigwardaw id-deċiżjoni tal-appellat l-Uffiċjal Prinċipali tal-Immigrazzjoni, kif ikkomunikata lill-appellant fit-24 ta' Marzu, 2018, li tinħareġ Ordni tat-Tneħħija u għar-Ritorn fil-konfront tiegħu, u dan stante li hu nstab li kien immigrant ipprojbit *ai termini* tal-artikolu 5 tal-Kap. 217.

Mertu

3. L-appellant appella l-Ordni tat-Tneħħija quddiem il-Bord fl-24 ta' Marzu, 2018 sabiex id-deċiżjoni tal-appellat Uffiċjal Prinċipali tal-Immigrazzjoni tiġi mħassra, fejn ikkontenda li s-sitwazzjoni tal-politika u tal-ħarsien tad-drittijiet fundamentali tal-bniedem fl-Alġerija ma kinitx tjiebet wisq u l-fatt li l-Alġerija ma kinitx membru tal-Kunsill tal-Ewropa kien garanzija li dawk id-drittijiet ma kienux qed jiġu osservati. Sostna li l-evalwazzjoni magħmula mill-appellat ma kinitx magħmula sew, għaliex huwa kien irnexxielu jissostanzja l-każ tiegħu.

Id-deċiżjoni appellata

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

“The Board observes that this is an appeal from a Return decision accompanied by a removal order issued to appellant Douib Djilali on the 24th of March, 2018 under the provisions of Article 5 of the Immigration Act. It is also an appeal from an entry ban valid for a period of five (5) years from date of issue which entry ban was also issued on the 24th of March, 2018.

An appeal was duly filed and various board sittings were held during which various witnesses were summoned, relative documents filed and also verbal submissions were made.

The Board’s remit’s in regard to appellant’s appeal is to examine whether appellant’s stay in Malta was illegal or not.

Facts

Appellant is an Algerian National. Appellant arrived in Malta on the 16th of October of the year 1997, married a Maltese National on the 26th of April, 2001, which marriage was declared null on the 27th of December, 2005. Appellant was an exempt person which status was cancelled in the year 2005.

During one of the sittings held it resulted that appellant had applied for refugee status which application had been rejected. Also, way back during the year 2016, appellant had been found guilty for human trafficking (copy of judgment on file). It transpired that appellant was illegally staying in Malta following an application filed by himself asking him to obtain a visa for his relatives. It then resulted that appellant was in fact illegally staying in Malta. Appellant was found residing in an apartment and subsequently return decision accompanied by a removal order and entry ban were issued.

Appellant testified and explained to the Board his situation in Algiers and the reason which made him flee Algiers. According to appellant his life is still at risk if he is made to return to his hometown.

During the course of the hearings appellant requested and was granted bail on conditions as laid down.

The Principal Immigration Officer as duly represented made various requests to the Embassy in Rome in order to make contact with the Algerian authorities in order to issue appellant with an ETD for travel purpose. Various attempts were made, however to date no positive feedback was received. A representative from the Consul also testified in this regard. All parties including appellant and his legal representative agreed to proceed to judgment irrespective of the fact that no feedback had reached the Principal Immigration Officer on the day case was sent for judgment.

Verbal submissions were made during which appellants legal representative presented various documentation about the situation in Algeria, together with other documents. During verbal submissions made it was referred to the Board that appellant has a daughter, born in Malta, who is registered under a Maltese National presumed to be the father, due to the fact that at the time appellants partner gave birth, appellants partner was still legally married to her husband under whom child was registered and still is. Birth certificate purporting such was also presented. The Board notes that no tentative was made or shown to have been made by appellant to regulate such situation by filing proceedings in court in order to obtain a judgement recognizing appellant as the father of the child.

On the day set for judgement, that is the 19th of December, 2019 the Board was informed that appellant has filed a paternity case as he is claiming that he is the father a child way back in the 2009. Paternity case was presented on the 19th December, 2019. Copy of sworn application 506/2019 AGV in the names Douib Djillali vs Farah Chawaf, Nicholas Cuschieri and Direttur tar-Registru Pubbliku, together with various documents were presented to the Board as confirmation that appellant has proceeded in court with said court case. Amongst these documents, appellant presented also a DNA test dated 4th of Noveber, 2019. Judgement was delivered on the 26th of February, 2021 confirming appellant as being the natural father of the child born way back in 2009.

The Board following this information decided to stay the handing down of the judgement to await the outcome of the paternity case.

On the 23rd of January, 2020 the appellant filed a note wherein the Board was informed that he has filed a subsequent application with the Refugee Commissioner requesting perimission to file subsequent application. On the 26th of March, 2020, appellant was informed by means of a letter issued by the Refugee Commissioner that his request cannot be examined further and is being considered as inadmissible in terms of Article 24(1)(d) of Chapter 420 of the Laws of Malta.

On the 6th of September, 2021 all parties present authorized the Board to proceed to give judgement, this time taking into consideration all evidence produced to date.

Sub legislation 217.12

The Board has carefully examined Sub legislation 217.12 which refers to procedures adopted for illegally staying third country nationals.

*This Board makes reference to judgment dated 31st January, 2006 in the names **Mohannid Sogr Garzadin versus I-Onorevoli Prim Ministru, I-Avukat Ġenerali tar-***

Repubblika, il-Kummissarju tal-Pulizija u l-Uffiċjal Ewlieni tal-Immigrazzjoni, application number 35/2005 and handed by the Constitutional Court.

In the said judgment court held that, “ir-rikorrent ma ħax ħsieb jitlob lill-Uffiċjal Ewlieni tal-Immigrazzjoni jerga’ jgëddidlu l-permess wara li dan għalaq fit-12 ta’ Ottubru 2003, u għalhekk wara dik id-data r-rikorrent gie li qiegħed joqgħod Malta bla permess u kien jitqies bħala Immigrant Projbit taħt l-art. 5 tal-Kap. 217. Il-Bord ta’ l-Appelli dwar l-Immigrazzjoni fuq talba tal-Uffiċjal Ewlieni tal-Immigrazzjoni ħareġ ordni ta’ tneħħija kontrieh taħt l-art. 14(1) tal-istess Kap. 217. Ir-rikorrent qiegħed jgħid illi, ladarba hu għandu l-familja tiegħu f’Malta, jekk titwettagħ l-ordni hu jinfired mill-familja u għalhekk jinkiser il-jedd tiegħu għall-ħarsien tal-ħajja tal-familja mħares taħt l-art. 8 tal-Konvenzjoni”.

Il-Qorti tenniet, “il-fatt illi persuna jkollha familja f’Malta u għalhekk għandha jedd għall-ħarsien tal-ħajja tal-familja ma jfissirx illi dik il-persuna hija meħlusa milli tħares id-dispożizzjonijiet tal-liġi dwar l-immigrazzjoni, għax l-art. 8 stess jagħti lill-Istat is-setgħa illi jirregola dan il-jedd b’liġi sabiex iħares inter alia “l-interessi tas-sigurtà nazzjonali, sigurtà pubblika jew il-għid ekonomiku tal-pajjiż”.

Return decision accompanied by a removal order and entry ban were issued in view of appellant’s default in regulating his position. There is no doubt that such default cannot be addressed to the Principal Immigration Officer who on his part issued return decision accompanied by a removal order and entry ban in observance of the law. Also and in view of verbal submissions made and various documents presented, the Board observes that in no way are appellant’s fundamental rights being prejudiced by the Principal Immigration Officer, it was the appellant who by his own default and inaction in regulating his position landed himself in the present situation.

“Billi għalhekk fil-fehma tal-qorti dan l-episodju kien provokat mhux min-nuqqas ta’ l-intimati li jħarsu l-jeddijiet fundamentali tar-rikorrent, iżda min-nuqqas tar-rikorrent stess illi jħares id-dispożizzjonijiet ta’ liġi legittima”.

The Board refers to the paternity case wherein appellant was recognised as being the biological father of a child born on the 17th of May, 2009.

The Board refers to Court documents presented by appellant showing that he proceeded to file said paternity case. Paternity case was filed only in the year 2019 – coinciding with the date when the Immigration Appeals Board was going to deliver judgement, which judgement was not delivered for reasons explained supra. Also, DNA test was carried out with the result being issued only on the 4th of November, 2019. Board notes that besides the confirmation that appellant is the biological father

of a child born way back in the year 2009, appellant failed to present any evidence whatsoever showing his relationship with the child. When appellant filed the paternity case, daughter fathered way back in 2009 was already ten (10) years old and no evidence whatsoever of any kind of relationship was presented. Apart from the Birth certificate, no other evidence was produced.

Board also refers to appellants Criminal court case wherein in 2016 appellant was found guilty for human trafficking.

Decide

The Board has considered all documented proof, evidence and witnesses produced. The Board has also considered the paternity case filed and its outcome. Board also took cognisance of verbal submissions made.

When the return decision accompanied by a removal order together with entry ban were handed to appellant, appellant was in actual fact illegally staying in Malta as per Chapter 217 Article 5 of the Laws of Malta.

The Board in its considerations did not take cognisance of the appellant's submissions in relation to respect for the impact it will have on his family and on the implications such decision might have if appellant returns to his home country, however as indicated supra, responsibility in ensuring that appellants stay was legal rested only on appellant himself, and certainly in no way was it any of the Authorities' responsibility nor default nor inaction of the Authorities. In regard to the outcome of the paternity case, appellant failed to present any evidence to prove his relationship with his biological daughter except for the birth certificate. Appellant only proceeded to present the paternity case in December of the year 2019, ten years following the birth the daughter he fathered way back in 2009.

On the basis of all evidence produced, appeal is being rejected."

L-Appell

5. L-appellant ippreżenta r-rikors tal-appell tiegħu quddiem din il-Qorti fit-8 ta' Novembru, 2021 *ai termini* tas-subartikolu 25A(8) tal-Kap. 217 tal-Liġijiet ta' Malta, fejn talab sabiex tithassar u tiġi revokata d-deċiżjoni appellata. Jgħid li huwa

jħossu aggravat bil-fatt li l-Bord iddeċieda li huwa kien tenut jirregolarizza l-pożizzjoni tiegħu.

6. L-appellat Uffiċjal Prinċipali tal-Immigrazzjoni ppreżenta r-risposta tiegħu fis-17 ta' Novembru, 2021 fejn sostna li l-appell odjern għandu jiġi miċħud għal dawk ir-raġunijiet li huwa jfisser fl-imsemmija risposta, u dan bl-ispejjeż kontra l-appellant.

Konsiderazzjonijiet ta' din il-Qorti

7. Il-Qorti ser tgħaddi sabiex tikkonsidra qabel xejn is-sottomissjoni tal-appellat Uffiċjal Prinċipali tal-Immigrazzjoni magħmula *ai termini* tas-subartikolu 25A(8) tal-Kap. 217. Jikkontendi li minn qari tar-rikors tal-appell, kien jirrizulta b'mod ċar li permezz tal-aggravji li qed iressaq l-appellant qed jitlob li ssir reviżjoni tal-provi li saru quddiem il-Bord u mhux li jiġi diskuss xi punt ta' dritt. In sostenn tal-argument tiegħu, huwa jagħmel riferiment għal diversi deċiżjonijiet ta' din il-Qorti u tal-Qorti tal-Appell (Superjuri).

8. Il-Qorti tagħraf li tassew l-appell odjern ma sarx fil-parametri stabbiliti mis-subartikolu 25A(8) tal-Kap. 217¹, u għaldaqstant m'għandhiex tiegħu konjizzjoni tiegħu. Tikkonsidra li l-argumenti miġjuba mill-appellant fir-rikors tal-appell tiegħu huma kollha msejsa fuq il-provi li saru quddiem il-Bord, u għalhekk huma diretti lejn l-apprezzament tagħhom kif magħmul mill-Bord. Tagħraf li l-appellant qed jikkontendi li l-Bord kien żbaljat meta qies li huwa seta' jirregolarizza l-pożizzjoni

¹ 25A(8) tal-Kap. 217 jipprovdi illi "id-deċiżjonijiet tal-Bord għandhom ikunu finali h'ief għar-rigward ta' punti ta' dritt deċiżi mill-Bord rigward deċiżjonijiet li jkunu jolqtu persuni bħal dawk imsemmija fit-Taqsima III, li minnhom jista' jkun hemm appell fi żmien għaxart ijiem quddiem il-Qorti tal-Appell (Ġurisdizzjoni Inferjuri).".

tiegħu, u jargumenta li ma kien hemm l-ebda obbligu legali jew terminu li fih huwa kien tenut jintavola proċeduri għall-fini ta' dikjarazzjoni ta' paternità. Izda mingħajr l-ebda tlaqliq il-Qorti tgħid li hawn l-appellant mhux qed iqajjem l-ebda punt ta' liġi sabiex jiġi deċiż minnha. L-istess tgħid fir-rigward tal-argument tiegħu li ċ-ċertifikat tat-twelid tat-tifla tiegħu huwa evidenza biżżejjed tar-relazzjoni li huwa kellu u għad għandu magħha. Dan kollu l-Qorti tgħid għal darb'oħra jolqot l-apprezzament ta' dawk il-provi miġjuba quddiem il-Bord li wassluh għad-deċiżjoni finali tiegħu, fejn ċaħad it-talba tal-appellant sabiex titwarrab l-Ordni tat-Tneħħija tiegħu.

Decide

Għar-raġunijiet premessi, il-Qorti tastjeni milli tiegħu konjizzjoni tal-appell odjern, filwaqt li tiddikjarah inammissibbli u b'hekk irritu u null.

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**

**Mary Josephine Musu'
Deputat Registratur**