

Successful

(15)

23/10/18

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

REGULATION 21 OF THE EUROPEAN COMMUNITIES
(RECEPTION CONDITIONS) REGULATIONS 2018

APPEAL AGAINST REFUSAL OF LABOUR MARKET ACCESS PERMISSION

CASE DATA

ATLM NUMBER: 1869683-ATLM-18

PERSON ID: 1013841-17

APPELLANT: XXX XXX

NATIONALITY: Georgia

SOLICITORS FOR THE APPLICANT: XXX XXX

TRIBUNAL MEMBER¹: Cindy Carroll

INTRODUCTION

1. The Appellant's initial application for a labour market access permission, (made on an unknown date) 2018 pursuant to Regulation 11 (3) of the European Communities (Reception Condition) Regulations, 2018 (hereinafter "the Regulations"), was refused by the Labour Market Access Unit by letter dated 28 August 2018. The Appellant sought a review of this refusal pursuant to Regulation 20 (1) (e) of the Regulations by email dated 29 August 2018. The Review Officer, in a decision dated 7 September 2018, upheld the decision to refuse the Appellant a labour market access permission.
2. The Appellant's legal representatives submitted a Schedule 8 Request for Permission to make a Late Appeal to the International Protection Appeals Tribunal (hereinafter "the Tribunal"). It would appear that an attempt was made to send same by fax on 21 September 2018. However, this Schedule 8 Notice was not received by the Tribunal until it was sent by email on 24 September 2018.

¹ Designated pursuant to reg.21(3) of the European Communities (Reception Condition) Regulations, 2018.

3. The Appellant's legal representatives were advised to submit a Schedule 7 Notice of Appeal. The Schedule 7 Notice of Appeal and enclosures were received by the Tribunal on 2 October 2018.

CASE FACTS AND DOCUMENTS

4. By way of background, the Appellant applied for international protection on 26 May 2017. He returned his questionnaire on 3 October 2017. His interview pursuant to section 35 of the International Protection Act 2015 was held on 11 April 2018. The section 39 determination issued from the International Protection Office on 4 May 2018. The Appellant currently has an appeal pending before IPAT in relation to his application for international protection.
5. The following documents have been submitted and all documentation has been considered:
 - Schedule 8 Notice for permission to make a late appeal dated 24 September 2018;
 - Schedule 7 Notice of Appeal dated 28 September 2018 and received on 2 October 2018 with the following documents attached:
 - Document 1: Letter from Department of Justice and Equality dated 28 August 2018;
 - Document 2: Email from Applicant dated 4 September 2018 seeking a review;
 - Document 3: Review of Labour Market Access Refusal dated 7 September 2018;
 - Document 4: Letter from Appellant to RIA dated 1 October 2018 re his lack of accommodation. The Tribunal regards this last document as being for information purposes only as the issue of the Appellant's accommodation is not before the Tribunal at this time.
6. In the Grounds of Appeal prepared on his behalf, the Appellant states that he did not apply for a labour market access permission at an earlier date because he was homeless. He states further that he has now had several offers of employment and he needs to work as he is not in Direct Provision.

RELEVANT LEGAL PROVISIONS

8. Article 15 (Employment) of the Directive provides as follows:

1. *Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for*

international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.

2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring that applicants have effective access to the labour market.

For reasons of labour market policies, Member States may give priority to Union citizens and nationals of States parties to the Agreement on the European Economic Area, and to legally resident third-country nationals.

3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.

This Article was transposed into domestic law and given effect in Regulation 11 of the Regulations. The relevant provision at issue in the within Decision is Regulation 11 (4) which provides as follows:

(4) The Minister may, on receipt of an application made in accordance with paragraph (3), grant a permission to the applicant where satisfied that – (a) a period of 9 months, beginning on the application date, has expired, and by that date, a first instance decision has not been made in respect of the applicant’s protection application, and (b) the situation referred to in subparagraph (a) cannot be attributed, or attributed in part, to the applicant.

DECISION OF THE REVIEW OFFICER

9. In the impugned decision, the Review Officer cited Regulation 11 (4) of the Regulations as follows:

11 (4) The Minister may, on receipt of an application made in accordance with paragraph (3) grant a permission to the applicant where satisfied that – (a) subject to paragraph (6), a period of 9 months beginning on the application date, has expired and, by that date, a first instance decision has not been made in respect of the applicant’s protection decision.

10. The Review Officer then went on to hold that, *“This regulation applies to international protection applicants that are waiting for a first instance recommendation from the International Protection Office. You received your first instance recommendation on 11/05/2018 and are currently in the process of appealing this decision.”*

DETERMINATION

11. The Tribunal has had regard to Regulation 11 (16) of the Regulations which provides that

In this Regulation, "application date", in relation to an applicant, means the date on which he or she is deemed under paragraph (16) to have made his or her protection application.

12. Regulation 11 (17) provides that

For the purposes of this Regulation, an applicant shall be deemed to have made his or her protection application- (a) in the case of an application under the Act of 2015, on the date on which, as the case may be –

(i) the Minister receives an application completed by the applicant in accordance with Section 15 (5) of that Act.....

13. The Tribunal finds that the Review Officer erred by disregarding the fact that the Appellant had been waiting for longer than 9 months for a first instance decision, confining his interpretation of Regulation 11 (4) to those international protection applicants awaiting a first instance decision from the International Protection Office. Under both the Regulations and Directive, the crucial factor is that an international protection applicant must be awaiting such a first instance decision for a period longer than 9 months from the date of their application for international protection.

14. The Appellant applied for international protection on 26 May 2017. The 9 month period specified in the Regulations (and indeed the Directive itself) expired in or around 26 February 2018 and the Appellant was not sent his decision until 4 May 2018, i.e. almost 12 months after he made his application for international protection.

15. The Tribunal is satisfied that the Appellant has satisfied the condition that a first instance decision by a competent authority was not made before the expiry of 9 months from the date of his application for international protection. No evidence has been put before the Tribunal to suggest that the Appellant himself contributed to this delay.

CONCLUSION

16. The Tribunal finds that the Appellant is eligible to apply for a labour market access permission. The Tribunal, under Regulation 21 (5) (a) of the Regulations, sets aside the decision of the Review Officer dated 7 September 2018.

.....
Cindy Carroll

Designated Member of the International Protection Appeals Tribunal

23 October 2018