

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: 1863025-ALTM-18

PERSON ID: 953804-15

APPELLANT: XXX XXX

NATIONALITY: Bangladesh

SOLICITORS FOR THE APPLICANT: XXX XXX

TRIBUNAL MEMBER¹: Cindy Carroll

INTRODUCTION

1. The Appellant's application for a labour market access permission made (on an unknown date) pursuant to Regulation 11 (3) of the European Communities (Reception Condition) Regulations, 2018 (hereinafter "the Regulations") was refused by the Labour Market Access Unit on an unknown date. The Appellant sought a review of this refusal pursuant to Regulation 20 (1) (e) of the Regulations by letter dated 24 July 2018. The Review Officer, in a decision dated 7 August 2018, upheld the decision to refuse the Appellant a labour market access permission. The Review Officer deemed the Appellant ineligible to apply for a labour market access permission because he is the subject of a transfer decision made pursuant to the European Union (Dublin System) Regulations 2018.

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

2. The Appellant submitted an appeal through his solicitors to the International Protection Appeals Tribunal (hereinafter “the Tribunal”) pursuant to Regulation 21 of the Regulations. The Notice of Appeal was signed by the Appellant’s legal representative on 23 August 2018, and was received by the Tribunal on 24 August 2018.

3. Regulation 21 (1) of the Regulations provides for the appeal to the Tribunal to be made within 10 working days of the date of the notice of the decision. As the date of the notice of the decision was 7 August 2018, the appeal should have been submitted to the Tribunal on or before 21 August 2018. However, the Appellant’s legal advisors do not seem to have been informed of that fact and the Tribunal is of the opinion that it would not be in the interests of justice to decline to determine the appeal at this stage. The within decision is being issued within 15 working days from the date of receipt of the appeal pursuant to Regulation 21 (4) (a) of the Regulations (i.e. before 13 September 2018).

CASE FACTS AND DOCUMENTS

4. The following documents have been submitted and the Tribunal has considered same:
 - Schedule 7 Notice of Appeal dated 23 August 2018:
 - Document 1: Application for review dated 24 July 2018;
 - Document 2: Review Decision dated 7 August 2018;
 - Document 3: Original refusal of Labour Market Access Permission – undated;
 - Document 4: Transfer decision – not included;
 - Document 5: IPAT Decision on appeal against transfer decision;
 - Document 6: Application for judicial review of IPAT decision

5. The Appellant applied for international protection in the State on 14 December 2015. The transfer decision was made on 5 September 2016 and, following an appeal, IPAT

issued a negative decision on 24 February 2017. While the Tribunal notes from the documents submitted that he has been given leave to apply for judicial review against the IPAT Decision, nevertheless the Appellant remains the subject of a transfer decision.

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. Regulation 11 (4) 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.

9. However Regulation (2) (2) of the Regulations provides as follows: *For the purposes of these Regulations, where a transfer decision, within the meaning of [European Union (Dublin System)] Regulations 2018, is made in respect of an applicant, he or she shall, on and from the sending to him or her of the notification under Regulation 5 (2) of those Regulations of the making of the transfer decision-*

(a) cease to be an applicant, and

(b) be deemed to be a recipient but not an applicant.

The same status pertains if such a person appeals the transfer decision to IPAT (Regulation (2) (3)).

REQUIREMENT TO BE AN APPLICANT

10. In order to make an application for a labour market access permission, the person concerned must be "an applicant". As the Appellant is the subject of a transfer decision, he is deemed to be a recipient under the Regulations. Regulation 11 (2) provides as follows:

Save as may be provided under any other enactment or rule of law, a recipient who is not an applicant shall not seek, enter or be in employment or self-employment.

11. It should be noted that Regulation 11 (12) provides that the Employment Permits Acts 2006-2014 shall not apply to a non-national (within the meaning of that Act) who is an applicant or a recipient.

12. Therefore, under the Regulations, the Appellant is, as a recipient, ineligible to apply for a labour market access permission.

THE POSITION UNDER REGULATION (EU) 604 / 2013

13. The Tribunal has had regard to the Regulation 604 / 2013 (the Dublin III Regulation) in order to see if the provisions therein might assist the Appellant in his appeal. Recital 39 of the Dublin III Regulation sets out the rights under the Charter of Fundamental Rights of the European Union which are relevant for the operation of that Regulation. Article 15 of the Charter relating to the right to take up employment is not included.

DETERMINATION

14. No submissions were furnished to the Tribunal in relation to the within appeal. The Tribunal notes the submissions made to the Review Officer in the application for a review dated 24 July 2018, and has considered same. It is noted that this application for a review was made pursuant to section 13 of the Employment Permits Act, 2006. As noted above, the Employment Permits Acts 2006 – 2014 do not apply to a person in the Appellant's position, and this was specifically stated in the Review Officer's decision. The aforementioned submissions are silent on the provisions of the European Communities (Reception Conditions) Regulations 2018 and the Tribunal has not been furnished with any submissions by or on behalf of the Appellant to show why Regulation (2) (2) and Regulation 11 (2) do not apply. The Tribunal finds that the Appellant is ineligible to apply for a labour market access permission because, as the subject of a transfer order, he is a recipient and not an applicant.

15. The Tribunal, under Regulation 21 (5) (a) of the Regulations, affirms the decision of the Review Officer dated 7 August 2018.

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Cindy Carroll

Designated Member of the International Protection Appeals Tribunal

11 September 2018

