

Dublin

(10)

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: 1863332-ALTM-18

PERSON ID: 928801-15

APPELLANT: XXX XXX

NATIONALITY: Pakistan

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 17 July 2018. The Review Officer, in a decision dated 19 July 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 8 August 2018, and was received by the Tribunal on 10 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 19 July 2018, the appeal should have been submitted to the Tribunal on or before 2 August 2018. The Tribunal deemed that the appeal had been made outside the statutory time period, thus depriving the Tribunal of jurisdiction to determine the appeal, and accordingly, by letter dated 16 August 2018 and sent by email, the Tribunal advised the Appellant’s solicitors that an application to make a late appeal under Regulation 22 needed to be completed.
4. The Tribunal received the application to make a late appeal (sent by fax in the early hours of 24 August 2018) on 24 August 2018. In that application, the Appellant’s solicitor explained that the Labour Market Access Unit had not advised the Appellant of any right to appeal. It was erroneously stated that the appeal was one day late (it was in fact five days late), and it was also noted that the notice of appeal had to be prepared during the vacation period and was a relatively novel appeal procedure. The Tribunal was of the opinion that it was in the interests of justice to accept the appeal. 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

5. The following documents have been submitted and the Tribunal has considered both the Schedule 7 and Schedule 8 Notices of Appeal and the decision of the review officer. The Appellant has failed to include all other documents as he is obliged to do pursuant to Regulation 21 (2) (a) of the 2018 Regulations.

- Schedule 8 Notice of Appeal dated 23 August 2018 seeking extension of time
- Schedule 7 Notice of Appeal dated 8 August 2018 with one document attached:
 - Document 1: Review of Labour Market Access Refusal dated 19 July 2018;
 - Document 2: Application for review dated 12 July 2018 (in fact according to the Review Decision, this was dated 17 July 2018) and made under s.13 of the Employment Permits Act 2006 – not included;
 - Document 3: Original refusal of Labour Market Access Permission – unknown date and not included;
 - Document 4: Application for Labour Market Permission – unknown date and not included;
 - Document 5: Transfer decision – not included
 - Document 6: Appeal to IPAT against transfer decision – not included;
 - Document 7: Application for judicial review of IPAT decision (pending) – not included.

6. The Appellant applied for international protection in the State on 11 May 2015. The transfer decision was made on 9 March 2016 and, following an appeal, IPAT issued a negative decision on 17 August 2016. 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. 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.

15. The Tribunal, under Regulation 21 (5) (a) of the Regulations, affirms the decision of the Review Officer dated 19 July 2018. The Tribunal further notes the concluding sentence of the Review Officer's decision which states, "*If the position changes and Ireland is determined as the Member State responsible, your client may re-apply*", and the Tribunal agrees with that statement.

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Cindy Carroll

Designated Member of the International Protection Appeals Tribunal

11 September 2018