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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: 1871050-ATLM-18

PERSON ID: 1031554-17

APPELLANT: XXX XXX

NATIONALITY: Albania

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 22 August 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 23 August 2018. The Appellant sought a review of this refusal pursuant to Regulation 20 (1) (e) of the Regulations by letter dated 30 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 submitted an appeal through his solicitors to the International Protection Appeals Tribunal (hereinafter "the Tribunal") pursuant to Regulation 21 of the Regulations. The Schedule 7 Notice of Appeal and enclosures were received by the Tribunal by fax on 14 September 2018 and by registered post on 17 September 2018. However, the Notice of Appeal was not signed by the Appellant and a signed version of same was sought by the Tribunal. The signed version of the Schedule 7 Notice of Appeal was received by the Tribunal on 19 September 2018, and the appeal was accepted on that date

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

3. The Tribunal now issues the within Decision on 9 October 2018, being 15 working days from the date of receipt of the appeal pursuant to Regulation 21 (4) (a) of the Regulations.

CASE FACTS AND DOCUMENTS

4. By way of background, the Appellant applied for international protection on 23 October 2017. He returned his questionnaire on 14 November 2017. His interview pursuant to section 35 of the International Protection Act 2017 was held on 11 June 2018. The section 39 determination issued from the International Protection Office on 8 August 2018.
5. The following documents have been submitted and all documentation has been considered:
 - Schedule 7 Notice of Appeal dated 19 September 2018 with the following documents attached:
 - Document 1: Application for Labour Market Permission dated 22 August 2018;
 - Document 2: Review of Labour Market Access Refusal dated 7 September 2018;
 - Document 3: Written submissions dated 14 September 2018.
6. In the Grounds of Appeal prepared on his behalf, the Appellant alleges that:
 - (i) The Minister erred in fact in determining that a period of 9 months, beginning on the application date, had not expired when a first instance decision was made in respect of the Applicant's application for international protection;
 - (ii) The Minister erred in law in determining that the Applicant's application for labour market access was ineligible pursuant to regulation 11 (4) of the European Communities (Reception Conditions) Regulations 2018 (S.I. 230 of 2018);
 - (iii) The Minister erred in law in determining that the Applicant's application for labour market access should be refused pursuant to regulation 11 (4) of the European Communities (Reception Conditions) Regulations 2018 (S.I. 230 of 2018).

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, *“The applicant must be waiting 9 months or more for his first instance recommendation from the International Protection Office at the time of applying for the labour market permission. Your client received his first instance recommendation from the International Protection Office on 08/08/2018 and was therefore ineligible at the time of his application to the labour market unit.”*

LEGAL SUBMISSIONS ON BEHALF OF THE APPELLANT

11. Legal submissions were prepared on behalf of the Appellant, and the Tribunal is grateful for the assistance provided by furnishing such submissions.

12. In those submissions, the Appellant makes the very clear point that more than 9 months had elapsed from the making of his application for international protection and the issuing by the International Protection Office of the Section 39 determination on 8 August 2018, the 9 month period having expired on 22 July 2018. The Appellant submits further that there is nothing in the Regulations that provides that a labour market access permission should not issue in respect of an applicant who has received a first instance Section 39 decision. The sole condition is that a period of 9 months has expired before such a decision has issued. The Tribunal accepts both of these points.

DETERMINATION

13. 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.

14. 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.....

15. The Tribunal finds that the Review Officer erred by holding that the Appellant must be waiting 9 months or more for his first instance recommendation from the

International Protection Office at the time of applying for the labour market permission. Neither the Regulations nor the Directive itself impose such a condition.

16. The Tribunal finds that the Review Officer erred by attributing the words *on that date* in Regulation 11 (4) to the date on which the Appellant applied for his labour market access permission. The Tribunal finds that the words *on that date* refer to the expiry of the initial 9 month period. If the first instance decision is still outstanding after the expiration of 9 months from the date of the application for international protection, an applicant is eligible to apply for a labour market access permission. To find otherwise would be contrary to Regulation 11 (4) of the Regulations and Article 15 of the Directive.

17. 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.

CONCLUSION

18. 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 and, pursuant to Regulation 21 (5) (b), the Tribunal determines the date of effect of the within determination to be 9 October 2018.

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Cindy Carroll
Designated Member of the International Protection Appeals Tribunal
9 October 2018