

Substance - 9 mths
- unsuccessful (B)

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 : 1882161-ATLM-18
PERSON ID: 1044399-18
APPELLANT: XXXXXX
NATIONALITY: Morocco
SOLICITORS FOR THE APPLICANT: N/A
TRIBUNAL MEMBER¹: Cindy Carroll



INTRODUCTION

1. The within Decision concerns an appeal against a refusal of a Review Officer to grant the Appellant a labour market access permission. It is not certain when the Appellant made his initial application for a labour market access permission pursuant to Regulation 11 (3) of the European Communities (Reception Condition) Regulations, 2018 (hereinafter "the Regulations"), or when that application was refused by the Labour Market Access Unit. The Appellant himself sought a review of this refusal by letter dated 24 February 2019 and the Review Officer refused the application by letter dated 1 March 2019.
2. The Appellant himself submitted an appeal 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 on 7 March 2019, and was received by the Tribunal on 8 March 2019.
3. The Tribunal acknowledged the Notice of Appeal by letter dated 8 March 2019 and advised the Appellant that the decision of the Review Officer was to be submitted before the Tribunal could accept the appeal as a valid appeal. The Tribunal also noted that the Appellant had named a firm of solicitors as his legal representatives and requested the Appellant to advise by return if he wished the Tribunal to correspond with him through that firm of solicitors.

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

4. While the Appellant did submit the decision of the Review Officer, which is the decision under appeal before the Tribunal, he did not advise the Tribunal as to whether he wanted the named firm of solicitors to act for him in relation to this appeal. Mindful of its obligations under the Data Protection Acts 1998 – 2018, the Tribunal did not correspond with the firm of solicitors named on the Schedule 7 Notice of Appeal.
5. The decision of the Review Officer having been received by 13 March 2019, the Tribunal accepted the appeal. By letter dated 13 March 2019, the Tribunal sought legal submissions from the Appellant and the Department of Justice and Equality by close of business on Thursday 21 March 2019, and indicated that the determination on the appeal would be made by 4 April 2019.
6. The Department of Justice and Equality indicated by email dated 13 March 2019 that they would not be making any further submissions but would rely on the review decision itself. At the time of writing, nothing further has been submitted by or on behalf of the Appellant.
7. This Decision has been determined within 15 working days from the date on which the appeal was received by the Tribunal as provided for in Regulation 21 (4) (a) of the European Communities (Reception Conditions) 2018.

CASE FACTS AND DOCUMENTS

8. The Appellant applied for international protection in the State on 22 February 2018. He received a negative recommendation from the International Protection Office on 6 September 2018. He currently has an appeal pending against that recommendation before the International Protection Appeals Tribunal.

22 Feb 2018

Refused

6 Sept 18

9. The following documents have been submitted and all documentation has been considered:
 - Schedule 7 Notice of Appeal;
 - Decision of the Review Officer dated 1 March 2019;
 - Invoice from Letterkenny University Hospital dated 15 February 2019.

10. In his Notice of Appeal the Appellant set out three Grounds of Appeal, each of which related to wishing to be able support himself and his mother (in Morocco) financially and also to pay his medical bills. No grounds were advanced as to why the decision of the Review Officer was wrong.

DECISION OF THE REVIEW OFFICER

11. The Review Officer refused the Appellant's application on the basis that he had received his first instance decision within 9 months of the date of his application for international protection within the State. Accordingly, he did not meet the conditions for the granting of a labour market access permission pursuant to Regulation 11 (4) of the European Communities (Reception Conditions) Regulations 2018.
12. The Review Officer noted that the Appellant had stated that he was struggling to pay for his basic needs, and advised that his legal representative would be able to inform him of additional supports available. The Tribunal echoes this advice.

RELEVANT LEGAL PROVISIONS

13. Article 15 (Employment) of the Directive 2013/33/EU (Recast Reception Conditions 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:

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.

DETERMINATION OF THE TRIBUNAL

14. In the instant case, the Appellant applied for international protection in the State on 22 February 2018 and received a first instance decision from the International Protection Office on 6 September 2018.

15. The Tribunal is satisfied that the Appellant received a first instance decision on his application from a competent authority within 9 months from the lodging of his application. Therefore, he does not meet the conditions set out in either Article 15 of Directive 2013/33/EU (Recast) or Regulation 11 (4) of the European Communities (Reception Conditions) Regulations 2018 and is ineligible to apply for a labour market access permission.

CONCLUSION

16. The Tribunal finds that the Appellant is not entitled to access the labour market and, under Regulation 21 (5) (a) of the Regulations, affirms the decision of the Review Officer dated 1 March 2019.

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Cindy Carroll

Designated Member of the International Protection Appeals Tribunal

4 April 2019