

S. b, teuce - 9 mtm - (29)

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 : 1893426-ATLM-19
PERSON ID: 1077944-18
APPELLANT: XXXXXX
NATIONALITY: Malawi
SOLICITORS FOR THE APPLICANT: XXXXXX
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"), but it would appear that the application was refused by the Labour Market Access Unit by letter dated 10 January 2019². The Appellant's legal representatives sought a review of this refusal by letter dated 22 January 2019 and the Review Officer refused the application by letter dated 23 January 2019.
2. The Appellant's legal representatives 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 21 March 2019, and was received by the Tribunal on 22 March 2019.
3. The Tribunal acknowledged the Notice of Appeal by letter dated 22 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. It was also noted that the Notice of Appeal provided, at Paragraph 4.2, that there were attached submissions; however no such submissions were attached.

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

² As per the decision of the Review Officer, which incorrectly cites the date as 10 January 2018

4. The Appellant's legal representatives submitted the Decision of the Review Officer by email on 25 March 2019. As the said Decision was dated 23 January 2019, the Tribunal was concerned that it had been received outside the prescribed time limit as set down in Regulation 21 (1), that is, within 10 working days of the date of the decision of the Review Officer.
5. The Tribunal wrote to the Appellant's legal representatives by letter dated 25 March 2019, the letter being sent by email and by post. The Appellant's legal representatives were advised of the provisions of Regulation 21 (1) and they were requested to send a Schedule 8 Notice of Appeal complying with the provisions of Regulation 22 (3), explaining why the appeal had not been lodged within the statutory time period.
6. The Appellant's legal representatives replied by email dated 26 March 2019, indicating that the impugned decision of the Review Officer had not been received by their office until 21 March 2019, and that accordingly the appeal had been submitted on time.
7. The Tribunal made enquiries with the Department of Justice and Equality who confirmed that the said Decision of the Review Officer had been re-issued on 15 March 2019. Having satisfied itself that it did have jurisdiction to determine the within appeal, the Tribunal wrote to the Appellant's legal representatives seeking submissions by 2 April 2019. Submissions were also sought from the Department of Justice and Equality, who furnished submissions on 27 March 2019.
8. At the time of writing, nothing further has been submitted by or on behalf of the Appellant, despite the fact that the Appellant's legal representatives had indicated in their email dated 25 March 2019 that Grounds of Appeal would follow.
9. This Decision has been determined within 15 working days from the date on which the complete 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

10. According to the impugned Decision of the Review Officer, the Appellant applied for international protection in the State on 11 December 2018. The Tribunal has not been provided with any further information by the Appellant's legal representatives.
11. 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;

11 Dec 2018
--applied
for
IP.

➤ Submissions from the Department dated 27 March 2019.

12. In his Notice of Appeal, the Appellant did not set out any grounds as to why the decision of the Review Officer was wrong.

DECISION OF THE REVIEW OFFICER

13. The Review Officer refused the Appellant's application on the basis that he had applied for international protection on 11 December 2018, and that *only time spent in the international protection process is counted for the purposes of applying for a labour market access permission; time spent in the jurisdiction whether lawfully or unlawfully does not count for this purpose.*

14. The Review Officer found that, as the Appellant had not been waiting for 9 months for a first instance decision on his protection application, he did not fulfil the criteria for the granting of a labour market access permission as set out in Regulation 11(4) of the Reception Conditions Regulations.

RELEVANT LEGAL PROVISIONS

15. 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. (emphasis added)

DETERMINATION OF THE TRIBUNAL

16. In the instant case, the Appellant applied for international protection in the State on 11 December 2018. As the aforementioned 9 month period only begins to run from the date of application (in the instant case, 11 December 2018), it is clear that a 9 months period has not passed since he made his application.
17. The Tribunal is satisfied that the Appellant 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

18. 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 23 January 2019 (and re-issued on 15 March 2019).

.....
Cindy Carroll
Designated Member of the International Protection Appeals Tribunal
12 April 2019