

**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:** 1873092-ATLM-18

**PERSON ID:** 993172-16

**APPELLANT:** XXXXXXXXXXXXXXX

**NATIONALITY:** Afghanistan

**SOLICITORS FOR THE APPLICANT:** XXXXXXXXXXXXXXXXXXXXXXX

**TRIBUNAL MEMBER<sup>1</sup>:** Cindy Carroll

**INTRODUCTION**

1. The Appellant applied for a labour market access permission pursuant to Regulation 11 (3) of the European Communities (Reception Condition) Regulations, 2018 (hereinafter "the Regulations") on 10 February 2019. The Labour Market Access Unit, by letter dated 18 February 2019, declined to accept the application because it was determined that the Regulations did not apply to the Appellant as he had received a first instance decision on his protection application on 13 April 2018, which predated the coming into operation of the Regulations on 30 June 2018. The Labour Market Access Unit stated that the Regulations came into force on 30 June 2018, and do not apply retrospectively. They returned the Appellant's application to him.
2. The Appellant's solicitors sought a review of this refusal by letter dated 25 February 2019, in which they erroneously referred to their client's pending appeal against a transfer decision. Correspondence issued from the Labour Market Access Unit on 1 March 2019 querying the reference to "a transfer decision" and noting that this did not correspond with their records.

---

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

3. The Appellant's solicitors wrote on 5 March 2019 stating as follows: *"The above refers and this matter is under appeal to the International Protection Appeals Tribunal and I enclose correspondence confirming that it is under appeal."* The Appellant's solicitors wrote again by letter dated 30 April 2019 and by letter dated 13 May 2019 seeking a response to their letter of 5 March 2019.
4. In the response dated 21 May 2019, the Labour Market Access Unit stated that they had not received a response to their previous letter seeking clarification on the transfer decision. They went on to clarify that the Appellant had received a first instance decision on his application for international protection from the International Protection Office on 13 April 2018 and, as such, his application for a labour market access permission was deemed ineligible because the European Communities (Reception Conditions) Regulations 2018 do not apply retrospectively. Accordingly, there is no decision from a Review Officer in respect of the Appellant.
5. 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 Appeal was submitted by email received by the Tribunal on 28 May 2019. A reply was sent on that date noting that no decision of the Review Officer had been submitted, and that the Notice of Appeal had not been signed by the Appellant. The Notice of Appeal signed by the Appellant was sent by email to the Tribunal on 28 May 2019, and was deemed accepted on that date.
6. The within determination has been made within 15 working days from the date on which the complete appeal, including the Schedule 7 Notice of Appeal signed by the Appellant himself, was received by the Tribunal as provided for in Regulation 21 (4) (a) of the European Communities (Reception Conditions) 2018.

#### **CASE FACTS AND DOCUMENTS**

7. The Tribunal has not been furnished with any details in respect of the Appellant save his nationality and the fact that he received a decision from the International Protection Office on 13 April 2018 in respect of his application for international protection.
8. This is a significant omission when one of the matters which the Tribunal is being called on to consider is whether the Appellant was waiting for a period in excess of 9 months for his first instance decision. The onus is on the Appellant to put all relevant material before the Tribunal to enable it to make its decision. However, in the instant case, these details are not relevant for the reasons set out below.

9. The Tribunal has considered all the documentation submitted.

- Schedule 7 Notice of Appeal with correspondence between the Appellant and his solicitors and that Labour Market Access Unit attached.
- A previous decision of this Tribunal which was submitted to the Labour Market Access Unit. In relation to the decision relied upon (1871050-ATLM-18), the Tribunal notes that the appellant in that case had not actually received a first instance decision when the European Communities (Reception Conditions) Regulations 2018 came into operation, his decision was still pending. Therefore the position is not akin to the position of the Appellant in the instant appeal who had received his first instance decision over two months before the Regulations came into operation.

### THE JURISDICTION OF THE TRIBUNAL

10. Regulation 21(1) provides as follows:

*A recipient who is dissatisfied with a decision of a review officer under Regulation 20, may, subject to Regulation 22, within 10 working days of the date of the notice of the decision, appeal, in fact and law, against that decision to the International Protection Appeals Tribunal.*

11. Regulation 21(5)(a) provides that

*The determination of the designated member under paragraph (4) shall be to affirm or set aside the decision of the review officer.*

12. It is therefore clear that the jurisdiction of the Tribunal is premised on there actually being "a decision of a review officer." The Tribunal, having looked at the documentation submitted, finds that there is "no decision of a review officer" before it.

13. The Tribunal is a creature of statute and can only operate within the parameters of the relevant legislative framework. The Tribunal can only determine an appeal once there has been compliance with statutory requirements. As there is no decision of a review officer, as set out in Regulation 21(1), if the Tribunal were to proceed to determine the substance of the arguments raised by the Appellant, any decision which issued would be void *ab initio*.

**DETERMINATION**

14. The Tribunal does not have jurisdiction to determine the Appellant's appeal and the appeal is therefore rejected.

.....  
Cindy Carroll

Designated Member of the International Protection Appeals Tribunal

18 June 2019