



**An Binse um Achomhairc i dtaobh Cosaint Idirnáisiúnta**  
**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:** 1987376-ATLM-20

**PERSON ID:** XXXXXX-XX

**APPELLANT:** XXXX XXXX

**NATIONALITY:** XXXX

**SOLICITORS FOR THE APPELLANT:** N/A

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

**INTRODUCTION**

1. The within Decision concerns an appeal against a decision of a Review Officer pursuant to Regulation 20(4) of the European Communities (Reception Conditions) Regulations 2018, which decision refused to grant the Appellant a labour market access permission.
2. The Tribunal has not been informed of the exact date of the Appellant's initial application for a labour market access permission pursuant to Regulation 11 (3) of the European Communities (Reception Condition) Regulations, 2018 (hereinafter "the Regulations"). The application was refusal by the Labour Market Access Unit. The Appellant herself, by letter dated 13 October 2020, sought a review pursuant to Regulation 20(1).

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

3. The Review Officer, in a decision dated 5 January 2021, upheld the decision to refuse the Appellant a labour market access permission. The Review Officer found that the delay in issuing a first instance in respect of the Appellant's application for international protection was caused by the Appellant herself, in circumstances which will be outlined below.
4. The Appellant herself submitted an appeal to the International Protection Appeals Tribunal (hereinafter "the Tribunal") pursuant to Regulation 21 of the Regulations and same was received on Monday 18 January 2021. The Labour Market Access Unit were given an opportunity to respond to the Notice of Appeal by email dated 22 January 2021 and they confirmed, by email dated 26 January 2021, that they would rely on the impugned decision of the Review Officer. The Appellant was advised of this correspondence, and was further advised that the Tribunal would issue its determination by 8 February 2021.
5. This Decision has been determined within 15 working days from 18 January 2021, the date on which the complete appeal was accepted by the Tribunal as provided for in Regulation 21 (4) (a) of the European Communities (Reception Conditions) 2018.

#### **SUMMARY OF CASE FACTS AND DOCUMENTS**

6. The Appellant applied for international protection on 12 June 2017 and attended at an interview pursuant to section 15 of the International Protection Act 2015 on that date. She returned her International Protection Questionnaire on 3 July 2017. She appears to have been granted a labour market access permission on 28 August 2018.
7. The Appellant failed to attend for her section 35 Interview on 10 October 2018, and did not provide an explanation for this failure to attend.
8. On 23 October 2018, the Dublin Unit received a "take back" request from the UK authorities, indicating that the Appellant was not present in the State. The UK authorities advised that the Appellant had been released from detention and would voluntarily return to the State. The Irish authorities confirmed, on 8 November 2018, that they would accept the Appellant's return under the European Union (Dublin System) Regulations 2018.
9. However, nothing was heard from the Appellant and, on 9 May 2019, it was determined that the Appellant's application would revert to the UK. The Appellant attended at the International Protection Office on 3 December 2019, and a "take back" request was issued to the UK.

10. The six month time limit to effect transfer to the UK expired due to Covid-19 restrictions, and, on 23 June 2020, the Appellant's application for international protection was listed as eligible for consideration in the State.

11. The Tribunal has considered all documentation submitted on behalf of both parties:

- Schedule 7 Notice of Appeal received on 18 January 2021;
- The Appellant's handwritten statement dated 14 January 2021;
- A letter from the UK Home Office dated 23 October 2018 confirming that a request had been made to Ireland, pursuant to the Dublin III Regulation;
- A Notification to the Appellant dated 27 September 2018 of a variation in her immigration bail;
- Review Officer's Decision dated 5 January 2021.

### **RELEVANT LEGAL PROVISIONS**

12. Article 15 (Employment) of the Reception Conditions Directive (Recast) 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.*

### **REVIEW OFFICER'S DECISION OF 5 JANUARY 2021**

13. The Review Officer notes the following points in her decision:

- The Appellant did not attend her section 35 Interview on 10 October 2018 and did not provide an explanation for this failure to attend;
- Following the correspondence from the UK authorities in November 2018 to the effect that the Appellant would return voluntarily from the UK to Ireland, the Appellant did not attend at the International Protection Office for 12 months;
- The Appellant did not contact the International Protection Office during that 12 month period;
- The Appellant did not renew her TRC;
- The Appellant had been outside the State in breach of section 16(3) of the International Protection Act 2015

### **APPELLANT'S LETTER OF 14 JANUARY 2021**

14. The Appellant has furnished the Tribunal with a long handwritten letter dated 14 January 2021. This letter is nearly five pages long, and the Appellant makes the following points:

- In September 2018, the Appellant received distressing news from Zimbabwe about her two children and her brother-in-law;
- The Appellant was very upset by the news; she became depressed, had nightmares, sleepless nights, panic attacks and felt alone in the world;
- The Appellant started looking for help to aid her family in Zimbabwe;
- An old friend offered her €300, however the friend lived in Northern Ireland and the Appellant did not have a bank account;
- The Appellant said that it was a life or death situation and she had no option but to travel to Northern Ireland. She said that she was not thinking straight and was not in her right *sense of mind*;
- The Appellant was arrested in Northern Ireland and told that she was in the wrong territory *because it was under UK not Ireland*;
- The Appellant explained her story to the officials; however, she was detained and subsequently flown to London and detained there for a day;

- The Appellant was released from detention on “signing on” conditions pending her return to Ireland. The Appellant said that she kept signing on in the UK from 11 October 2018 until her return to Ireland in April 2019;
- The Appellant was in Waterford and she waited for a letter from IPO but to no avail;
- The Appellant’s TRC expired on 2 December 2019, and she went to IPO on 3 December 2019 to have it renewed;
- The Appellant was told that her case was being transferred to the UK; however, in July 2020, she was told that her case would be dealt with in Ireland;
- The Appellant said that the whole experience shattered her, it all happened so fast and she was not thinking straight;
- The Appellant now lives in sorrow, pain and depression because she sees her fellow asylum seekers going to work and having a better life;
- The Appellant said that she had told the UK authorities about her interview in Ireland; the UK authorities said that they had notified the Irish authorities and that *everything was in order*. The Appellant said that she did not contact IPO because *the UK police said that they had done it*;
- The Appellant concluded by saying that she felt idle and useless, her wish was to be granted permission to work. It would make a huge difference to her life.

#### **ISSUE TO BE DETERMINED BY THE TRIBUNAL**

15. The question for the Tribunal is whether the delay in issuing the Appellant’s first instance decision in relation to her application for international protection can be attributed to the Appellant.
16. The Tribunal notes a difference between the wording of the Directive - *the delay cannot be attributed to the applicant* – and the wording of the Regulations - *the situation referred to in subparagraph (a) [i.e. the delay] cannot be attributed, or attributed in part, to the applicant*.
17. As there is a difference between these two legal instruments, the Tribunal is obliged to apply the wording of the Directive in line with the judgment of the Court of Justice of the European Union in its judgment in ***C378/17 Minister for Justice & Equality & Others v Workplace Relations Commission & Others* ECLI:EU:C:2018:979**.
18. While the Tribunal has read and considered the contents of the Appellant’s heartfelt letter, it is not the role of the Tribunal in its jurisdiction under the 2018 Regulations to ascertain the credibility or veracity of the statements made therein. The Tribunal notes the Appellant’s claim that she was not in her right mind when she made the decision to travel to Northern Ireland, however the Appellant has not adduced any

medical evidence to support that assertion. The Tribunal also notes that the Appellant had been given the right to work in August 2018 shortly before she left the jurisdiction.

19. The Tribunal is of the opinion that the delay in issuing the first instance decision in the Appellant’s application for international protection is solely that of the Appellant. The Appellant failed to attend her section 35 interview on 10 October 2018, and the Appellant left the jurisdiction without the consent of the Minister for Justice.

20. Furthermore, the Appellant has not put any evidence before the Tribunal to show that she notified the Irish authorities of her return to the State in a timely manner. The Irish authorities were told in November 2018 by their UK counterparts that the Appellant would voluntarily return to Ireland. She failed to do this until her TRC expired on 2 December 2019. Then, and only then, did the Appellant make any attempt to regularise her position in the State. Applicants are not passive participants in the process.

**DETERMINATION AND CONCLUSION OF THE TRIBUNAL**

21. The Tribunal finds that the delay in issuing the first instance decision can be attributed solely to the Appellant herself.

22. 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 5 January 2021.

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Cindy Carroll

Deputy Chairperson and Designated Member of the International Protection Appeals  
Tribunal

8 February 2021