



An Binse um Achomhairc i dtaobh Cosaint Idirnáisiúnta
The International Protection Appeals Tribunal

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

**REGULATION 21 OF THE EUROPEAN COMMUNITIES
(RECEPTION CONDITIONS) REGULATIONS 2018-2021**

APPEAL AGAINST REFUSAL OF LABOUR MARKET ACCESS PERMISSION

CASE DATA

ATLM NUMBER:	2011604-ATLM-21
PERSON ID:	XXXXX
APPELLANT:	XXXXX XXXXX
NATIONALITY:	XXXXX
SOLICITORS FOR THE APPELLANT:	XXXXX
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. The Appellant's initial application on 15 January 2021 for a labour market access permission pursuant to Regulation 11 (3) of the European Communities (Reception Condition) Regulations, 2018 (hereinafter "the Regulations") was refused on 26 February 2021. The Appellant's legal representative sought a review of this refusal by email dated 12 March 2021.
2. The Review Officer, in a decision dated 18 June 2021, upheld the decision to refuse the Appellant a labour market access permission. The Review Officer deemed the Appellant ineligible to apply for a labour market access permission because he had not

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

been forthcoming in his application and because he failed to co-operate in the process.

3. The Appellant submitted an appeal through his legal representative to the International Protection Appeals Tribunal (hereinafter “the Tribunal”) pursuant to Regulation 21 of the Regulations. The Schedule 7 Notice of Appeal was submitted by email on 5 July 2021.
4. The Appeal was deemed received on 5 July 2021. The Tribunal sought written submissions from both the Appellant’s legal representatives and the Labour Market Access Unit by 12 July 2021. The LMAU made submissions on 8 July 2021 and the Appellant’s legal representative made submissions on 12 July 2021. The Tribunal then afforded each party an opportunity to comment on each other’s submissions by 16 July 2021. The Appellant’s legal representatives responded by email dated 16 July 2021 (received by the Tribunal on 19 July 2021.)
5. This Decision has been determined within 15 working days from 5 July 2021 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

6. The Appellant is a 38 year old Palestinian national. He applied for international protection in the State on 17 August 2020. He attended a section 15 interview on 17 August 2020 and returned his Application for International Protection Questionnaire (AIPQ) on 3 September 2020. He is married with four children; his wife and children are all in Palestine.
7. The Tribunal has considered all documentation submitted on behalf of both parties:
 - Schedule 7 Notice of Appeal submitted on 5 July 2021;
 - Labour Market Access Refusal, 26 February 2021;
 - Application for review dated 12 March 2021;
 - Review Officer’s Decision dated 18 June 2021;
 - QIPQ dated 1 September 2020;
 - The Appellant’s conviction record in Belgium, submitted by LMAU on 8 July 2021;
 - Submissions on behalf of the Appellant dated 12 July 2021;
 - Further submissions on behalf of the Appellant dated 16 July 2021.

ORIGINAL DECISION 26 FEBRUARY 2021

8. The Appellant's initial application for a labour market access permission was refused on the grounds that he had failed to co-operate in the international protection process. It was noted that he had answered two questions untruthfully; namely that he had not applied for international protection elsewhere, and that he had problems in Belgium and could not apply. The delay in the process in Ireland was attributed to the Appellant.

SUBMISSIONS DATED 12 MARCH 2021

9. The Appellant's legal representative made submissions to the Review Officer by email date 12 March 2021. She stated that her client now admitted that he was untruthful in some of the answers he gave in his initial application. He had in fact applied for refugee status in Belgium in or around November 2015, when his finger prints were taken. He was granted refugee status on political grounds. This status was subsequently revoked because the Appellant was convicted of involvement in human trafficking. He told his legal representative that he had contacted traffickers in an attempt to bring his brother over from Palestine. He said that he was detained for a year and did not appeal because his lawyer advised him not to.
10. The Appellant's refugee status was revoked and he received a deportation order in December 2016. However, he was given leave to remain in Belgium as he could not be deported to Gaza. He left Belgium in January 2020 and travelled to Turkey via Amsterdam and Helsinki. He arrived in Ireland on a direct flight from Turkey on 20 July 2020 and destroyed his Belgian documents en route to Ireland. He said that his Belgian lawyer told him not to disclose the revocation and subsequent leave to remain when he arrived in Ireland. He had been mistakenly led to believe that his fingerprints, previous application and grant of status in Belgium would not be discovered due to his having spent time in Turkey. It was submitted that the Appellant now knows that he should have been truthful from the start. It was also stated that he had applied for protection upon arrival in the State on 20 July and it was noted that he did not have legal advice when completing his questionnaire. He is now fully aware of his duty to co-operate.
11. Reference was also made to the current Covid situation and the delay which that has had on processing applications.

REVIEW OFFICER'S DECISION 18 JUNE 2021

12. The Review Officer, in her decision dated 18 June 2021, found that the Appellant was not eligible for a labour market access permission. The Review Officer noted the representations made on behalf of the Appellant. Reference was made to the EURODAC hit on 3 September 2020 which provided that the Appellant had been granted refugee status on 14 December 2015. This was revoked on appeal on 4 December 2019; the Belgian authorities had no information on the Appellant's whereabouts since then.
13. The Review Officer gave the date of application for international protection in the State as being 17 August 2020. The Review Officer pointed out a number of questions where the Appellant could have given information about his residence in Belgium and his convictions in Belgium. It was also pointed out that there is no evidence that the correct information how furnished to LMAU was also furnished to the International Protection Office (IPO).
14. Reference is made to IPO seeking information from GNIB and that preliminary information was provided indicating that the Appellant was recognised as the leader of a criminal gang and of human trafficking activities and was convicted of these offences in Belgium.
15. The Review Officer found that the fact that the Appellant had not been forthcoming about his activities in Belgium had led to a delay in the processing of the application. It was necessary for further queries to be made by IPO into the Appellant's activities in Belgium.

SCHEDULE 7 NOTICE OF APPEAL 5 JULY 2021

16. There are 4 substantive grounds in the Notice of Appeal (Ground 5 is merely an assertion of a right to submit further grounds of appeal or documentation). In summary, it is submitted that the Appellant complied with his obligations to cooperate, that he did not cause a delay in the process, that it was a breach of fair procedures for LMAU not to share the GNIB report on which they relied with the Appellant; the Appellant's activities in Belgium are not relevant when considering access to the Labour Market.

AIPQ 1 SEPTEMBER 2020

17. The Tribunal notes the following details from the AIPQ: In the introductory section, applicants are told at point 11 to include all information and at point 18 to be truthful

and accurate in the information they give. In the summary, at point 21(i), applicants are reminded to be truthful. The Tribunal notes that this questionnaire was translated from Arabic, the Appellant would have had the document in Arabic. The Tribunal also noted that the Appellant had 17 years of education and was educated to university level.

18. The Tribunal notes that the Appellant does not list Belgium as a former place of residence (Q6). He then states at Q10 that he resided in Belgium illegally. At Q43, he states that he came to Belgium illegally; however he does not set out any dates for Belgium, although he does set out dates for other countries to which he travelled. He states that he arrived in Ireland on 30 July 2017 (same date is given at Q56).
19. At Q69, the Appellant does not refer to any arrests in Belgium. At Q72 he does not disclose the fact that he had been charged in Belgium. At Q83, he indicated that he had not applied for asylum or protection in any other country.

INFORMATION FROM GNIB SENT ON 8 JULY 2021

20. Under Regulation 24(1) of the 2018 Regulations, provision is made whereby the Minister and the IPO may exchange information. The Tribunal is of the opinion that this regulation does not extend to the Tribunal in the performance of its duties under the Regulations. The Tribunal is a creature of statute and must work within those parameters. Therefore the Tribunal may only consider material which is directly submitted by the parties in the context of the appeal itself.
21. The information which is before the Tribunal is not the GNIB Report which was before the Review Officer. The information before the Tribunal was received from LMAU with the consent of GNIB on 8 July 2021 as their submissions to the Tribunal. The Tribunal subsequently shared that information with the Appellant's legal representatives and gave them an opportunity to respond.
22. The information provided by GNIB shows that on 5 October 2017 the Appellant was convicted of 5 offences. This is a different picture to that which was painted by his legal representative (acting on instructions) in her email to the Review officer on 12 March 2021.

SUBMISSIONS 12 JULY 2021

23. In response to the Tribunal's invitation, his legal representative made submissions by email dated 12 July 2021. The date of application for international protection is now given as 17 August 2021, not 20 July 2020 as previously stated. Much of the information contained therein is a re-iteration of what has already been said on behalf of the Appellant. The legal representative pointed out that the Appellant has not had his section 35 interview yet. She also pointed out that IPO knew about the EURODAC hit since 3 September and therefore any delay in enquiries with Belgium is not the Appellant's fault.
24. It is also stated that the Appellant has tried to ameliorate his situation by providing a detailed account of his time in Belgium.

SUBMISSIONS 16 JULY 2021

25. Following sight of the list of convictions supplied by GNIB, the Appellant's legal representative made further submissions. She re-states the fact that she has not been furnished with the GNIB report itself. It is stated that the Appellant has previously advised that he was convicted in Belgium and does not dispute this record. It is submitted that he contacted an Algerian national to seek assistance in bringing his brother Khaled and his two cousins over to Belgium and that activity was seen as criminal activity. His lawyer in Belgium told him not to disclose his history in Belgium. It was submitted that the fact that the Appellant was not forthcoming did not lead to a delay in the processing of his protection application.

RELEVANT LEGAL PROVISIONS

26. 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.

Pursuant to the European Communities (Reception Conditions) (Amendment) Regulations 2021 (S.I. 52/2021) (“The 2021 Regulations”) the time period of 9 months was reduced to 6 months.

RELEVANT CASE LAW

27. The Tribunal relies on the judgment of the Court of Justice of the European Union in linked cases **C-322/19 and C-385/19 ECLI:EU:C:2021:11**², which judgment was delivered on 14 January 2021, where the Court specifically examined the issue of delay on the part of an applicant in relation to permission to access the labour market.

28. The Court held, and the Tribunal adopts, as follows: (paragraphs 74-80):

By the second question referred in Case C-385/19, the International Protection Appeals Tribunal asks, in essence, what acts may constitute a delay attributable to the applicant for international protection within the meaning of Article 15(1) of Directive 2013/33.

It should be noted at the outset, as the Advocate General noted in point 99 et seq. of his Opinion, that Directive 2013/33 gives no guidance in that regard.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62019CJ0322&qid=1613054019743&from=EN>

Accordingly, it is necessary to refer to the rules of common procedures for granting international protection established by Directive 2013/32, which, as stated in paragraph 60 above, must be taken into account in interpreting the provisions of Directive 2013/33.

It thus follows from Article 31(3) of Directive 2013/32 that a delay in the examination of his or her application for international protection is attributable to the applicant where that applicant fails to comply with his or her obligations under Article 13 of that directive. That provision provides that applicants have an obligation to cooperate with the competent authorities with a view to establishing their identity and other elements referred to in Article 4(2) of Directive 2011/95, namely their age, background, including that of relevant relatives, nationality (or nationalities), country (or countries) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection. The applicant's obligation to cooperate means that he or she must supply, as far as possible, the required supporting documents and, where appropriate, the explanations and information requested (judgment of 14 September 2017, K., C-18/16, EU:C:2017:680, paragraph 38).

Article 13 of Directive 2013/32 also allows Member States to impose upon applicants other obligations necessary for the processing of their application, inter alia, to require them to report to the competent authorities or to appear before them at a specified time and place and to inform the authorities of their current place of residence, and even provide that applicants may be searched or photographed or have their statements recorded.

It follows, in essence, from the foregoing considerations that a delay in the processing of an application for international protection may be attributed to the applicant where he or she has failed to cooperate with the competent national authorities. Bearing in mind the need for uniform interpretation and application of EU law, as recalled in paragraph 57 et seq. above, this interpretation is called for even where, as a result of a specific derogating act, in the present case Protocol No 21, Directive 2013/32 does not apply in the Member State concerned.

In the light of the foregoing considerations, the answer to the second question referred in Case C-385/19 is that Article 15(1) of Directive 2013/33 must be interpreted as meaning that a delay in the adoption of a decision at first instance concerning an application for international protection which results from a lack of cooperation by the applicant for international protection with the competent authorities may be attributed to that applicant.

DETERMINATION OF THE TRIBUNAL

29. The Tribunal is of course well aware of the impact which Covid-19 has had in general, and more specifically in the context of international protection applicants. However, the Tribunal is of the opinion that Covid-19 is not the delaying factor in the instant case. The Appellant

herein has failed to engage in the process and has not co-operated in the international protection process.

30. The Appellant arrived in the State on 30 July 2020. However he did not apply for international protection until 17 August 2020, and no explanation has been given for this delay (albeit short), nor has any evidence been put before the Tribunal as to what he was doing during that period (which was nearly three weeks).
31. To the Appellant's credit, he did return his questionnaire in a timely manner. The Tribunal notes that while same is dated 1 September 2020 (and was not due to be returned until 8 September 2021), the translation of same was not submitted from Word –Perfect Translations until 23 November 2020. Clearly, no delay can be attributed to the Appellant for that. The Tribunal also notes that he identifies a brother "xxxxx" in the AIPQ (Q37) who is in Belgium (Q37). However, he also identifies a brother "yyyyy" as also being in Belgium, yet his instructions to his solicitor he said that he assisted his brother xxxxx and two cousins in coming to Belgium.
32. In the Tribunal's opinion, the timely return of the questionnaire is the height of the Appellant's co-operation with the international protection process. The Appellant has drip-fed information to the state authorities and only when he was actually confronted with information which had been discovered by the State and which contradicts his story.. He omitted crucial information from his questionnaire, namely his refugee status in Belgium; in fact he specifically stated that he lived illegally in Belgium (Q10 AIPQ). He also omitted information about his convictions in Belgium; in fact, when he disclosed such information to his solicitor, he only mentioned one conviction, whereas it was five convictions. Applicants are not passive participants in the process. As noted above (para 24), the Appellant's legal representative has said that the Appellant has tried to ameliorate his position by giving a detailed account of his time in Belgium. The Tribunal does not accept that. Minimal information has been given about the Appellant's time in Belgium over a number of years. The Tribunal finds that the Appellant has only been forthcoming when faced with lacunae in his story. The meagre furnishing of information when there is no other choice does not, in the Tribunal's view, amount to co-operation.
33. The Appellant's legal representative makes the point that the Appellant completed the AIPQ without the benefit of legal advice. The Tribunal does not accept this as an excuse for the omissions in the AIPQ. As noted already, the Appellant had the questionnaire in Arabic, and he is a university educated man. The admonition to be truthful appears twice in bold type in the AIPQ. Furthermore, the Appellant gave plenty of detail in relation to his core claim and submitted a number of documents. The Tribunal does not accept that the absence of legal advice is the reason for his lack of truthfulness.
34. The Tribunal finds that the Appellant has not co-operated in the international protection process.

CONCLUSION

35. 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

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Cindy Carroll

Deputy Chairperson and Designated Member of the International Protection Appeals

Tribunal

26 July 2021