



محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

**In the name of His Highness Sheikh Tamim Bin Hamad Al Thani,
Emir of the State of Qatar**

Neutral Citation: [2020] QIC (F) 10

**IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE
FIRST INSTANCE CIRCUIT**

30 July 2020

CASE No. CTFIC0014/2020

AYCAN RICHARDS

Applicant

v

INTERNATIONAL FINANCIAL SERVICES QATAR LLC

Respondent

JUDGMENT

Members of the Court

Justice Arthur Hamilton

Justice Fritz Brand

Justice Helen Mountfield

ORDER

1. The Court orders the Respondent forthwith to provide to the Applicant all necessary documents to transfer the Applicant's sponsorship from the Respondent to the Applicant's husband, Alan Richards. These documents should comply with the following conditions:
 - (a) Include the form entitled "notice form" which is, the Court has been informed, the new form used to complete transfer of sponsorship requests post COVID-19 in accordance with the Ministry of Labor requirements;
 - (b) Include a "No-Objection Certificate" letter, providing for the transfer from the Respondent to the Applicant's husband, Alan Richards;
 - (c) Include all relevant documents, which are to be fully completed, stamped, and signed by the Respondent; and
 - (d) Include all other documents that are necessary to complete the Applicant's transfer of sponsorship.

JUDGMENT

1. This is a second application by the Applicant against the Respondent in relation to the transfer of her employment sponsorship. In the earlier application the Court at first instance on 19 July 2020 ordered the Respondent "forthwith to reissue to the Applicant (i) the No-Objection Certificate ("NOC") letter and (ii) all support documentation to facilitate her transfer of sponsorship which was originally issued by it in 2019" (see the judgment reported at [2020] QIC (F) 9). The Appellate Division of the Court on 26 July 2020 refused permission to appeal against that decision (see the judgment reported at [2020] QIC (A) 3).

2. In that earlier application the Court understood that what the Applicant was seeking was the reissue by the Respondent of documentation which it had earlier issued to her but which had, through no fault by her, become unavailable following its having been handed over to the Immigration Office and not returned by it. It now appears that what she seeks is action on the part of the Respondent which will allow an application for transfer of her sponsorship to her husband (Alan Richards) to be completed. The matter remains urgent.
3. For a narrative of the general circumstances surrounding the desired transfer of the Applicant's sponsorship reference may be made to the judgments above referred to.
4. The company to which the Applicant had originally intended to have her sponsorship transferred was not established within the timescale previously envisaged. Matters were further complicated by changes in procedure instituted by the public authorities in Qatar to meet the risks posed by the COVID-19 virus. A new style of form was introduced, the use of which is now mandatory. That form has to be submitted electronically through a Ministry of Labour portal.
5. As mentioned above, the Applicant is married to Alan Richards. He also is a non-Qatari national, whose employment in Qatar is sponsored by a Qatari employer. The Applicant, as his wife, is a "Family Member" within the meaning of the (QFC) Immigration Regulations. These Regulations envisage residence permits being issued to Family Members. In such circumstances the Family Member is sponsored by the relative QFC Employee, not by any employer (See Article 13(1)). That form of sponsorship may be referred to as "personal" or "family" sponsorship.
6. The QFC Employment Code ("the Code"), referred to in the earlier application, provides by paragraph 10: "Employers must take all steps necessary to permit their Employees, whether Sponsored or not, to transfer to another employer in the State, whether in the QFC or not. This includes providing all documentation required under State or QFC requirements, including all non-objection letters and consents...".
7. Paragraph 10 refers expressly only to transfers from one employer to another employer, not in terms to transfers from a sponsoring employer to a personal or family sponsor

who themselves derives their immigration status from employment. However, there seems no reason in principle why the obligation in that paragraph should be restricted to the former class of transfer, and not refer equally to the transfer of sponsorship to sponsorship arising from the employment of another person. Were the narrower construction to be adopted, we perceive it could well result in particular difficulties for women who are disproportionately likely to give up employed status for reasons relating to pregnancy and childbirth. Indeed, the perverse result of a narrow construction would be to challenge the ability of families to remain together in Qatar where two members of a couple came to Qatar with separate contracts of employment but thereafter one member of the couple gives up work and wishes to remain as a dependent of their employed spouse. That cannot have been the intention of the Code.

8. The Respondent, in its Response to this Application, refers to Paragraph 10 and does not, at least expressly, dispute that it is applicable where the desired transfer is of the latter class. Nor does it dispute the assertion in the Application that, in the case of another employee of it (a Mrs Lontoc), it provided the documentation for a transfer to that employee's husband's sponsorship. The Court concludes that the obligation in paragraph 10 implicitly extends to transfers to a personal or family sponsor. This conclusion appears to be confirmed by the Forms for Notice of Termination of Contractual Relationship issued by the Ministry of Administrative Development, Labor & Social Affairs. These (printed in Arabic but translations of which into English have been obtained by the Court) envisage, as alternatives, each of the classes of transfer referred to above.
9. The Respondent, while complying with the Court's order as made in the earlier application, has declined voluntarily to assist the Applicant in now transferring her sponsorship to that of her husband. In its Response it opposes this Application and indicates a wish to make a Counterclaim against the Applicant. No formal Counterclaim has been filed but, as the Respondent remains without legal representation, the contentions in favour of a counter remedy are taken into account by the Court and discussed below.
10. The burden of the Respondent's contentions is that it has already fully complied with its responsibilities under Qatari law in relation to the Applicant's sponsorship and that

the Applicant misrepresents that law “causing a reputation damage not only to [the Respondent] but the whole legal eco-system within QFC and its various independent entities and to non-QFC organizations as well”.

11. The Respondent places emphasis on its responsibility as a sponsoring employer under that law. In particular, it relies on Article 8 of the Code, which provides:

“A Sponsored Employee who is terminated from his employment may not remain in Qatar unless he is able to transfer sponsorship to a new employer. If documents are not filed with the Ministry of Interior to transfer the sponsorship of the employee within thirty (30) days of the termination of the Employment Contract the Employer must take steps to cancel the Sponsored Employee’s (and any Family Member’s) Residency Permit. The Sponsored Employee (and any Family Members) must leave the State within seven (7) days of the date of cancellation of the Residency Permit(s)”.

It also relies on Article 20(1) of the QFC Immigration Regulations which, so far as material, provides:

“.....the QFC Employee, and any Family Member who is sponsored by the QFC Employee, shall leave the State within ninety (90) days from (A) the date of termination of the employment for which he was granted the entry visa or residence permit, or (B) the date on which such entry visa or residence permit expires, if earlier.”

12. The Respondent maintains that, the Applicant’s employment with it having come to an end in 2019 and she having failed timeously to arrange for a transfer of her sponsorship, it was legally obliged to take steps to cancel its sponsorship of her. It did so, initiating that process in the early months of 2020. That cancellation process, it maintains, would long have been completed but for the Applicant’s refusal to surrender her Qatari identification card. Its “Counterclaim” in this process is designed to secure that surrender. The Respondent’s actions have, it maintains, been wholly in accordance with advice it has received from immigration officials.

13. The Court recognises that the Respondent is properly concerned that it should not act in any way which infringes (or threatens to infringe) Qatari rules or procedures with respect to immigration. However, whether the Applicant has been in breach of any such rules or procedures (such as by non-compliance with Article 20(1) of the Immigration Regulations) is a matter for the public authorities of the State. It does not detract from the responsibilities of the Respondent as sponsoring employer which, under paragraph 10 of the Code, construed as explained above, endure until she departs the State or its sponsorship of her has effectively been transferred, neither of which events has occurred.

14. The Applicant has given a full explanation as to why she has not, as yet, succeeded in transferring her sponsorship. That explanation may, or may not, be satisfactory to the Qatari immigration authority which in the end is responsible for deciding whether or not her residence permit should be continued or renewed. The Respondent's responsibility to the Applicant is to take all steps necessary to permit her to transfer her sponsorship, including the provision of such documentation as is in the current circumstances required for that purpose. That documentation includes, but is not limited to, all non-objection letters and consents. Nothing has been put before the Court to suggest that, if the Respondent were now to discharge that responsibility to the Applicant, the Respondent would itself be in breach of any immigration rule or procedure; and – for reasons which we have outlined above – we consider that it is in breach of the Employment Code properly construed by failing to provide the non-objection letters and consents required to enable the Applicant to transfer her sponsorship status to that of a dependent of her husband, who gains his status through his own employment sponsor.

15. The Respondent also states that “MOI has confirmed to us that this transfer cannot be completed without [the Respondent] issuing also NOC letters for [the Applicant's] daughter and nanny...”. No written confirmation to that effect is produced. In any event, the Applicant does not seek from the Respondent any NOC for her daughter or her daughter's nanny. Any difficulty which the Applicant might have with the immigration authorities by reason of the absence of any such further NOC letters is immaterial to the Respondent's responsibility to her.

16. In these circumstances the Court is satisfied that the Applicant is entitled to the further relief which she seeks in this application. The Respondent has not in its Response taken any objection to the formulation of the relief which the Applicant seeks, only to the principle of the relief. The Court accordingly sees no sufficient reason for denying to her relief in the terms sought by her. It accordingly grants the Application substantially as sought.

17. In the circumstances it is unnecessary and inappropriate for the Court to entertain at the present time the relief sought by the Respondent by way of counterclaim.

By the Court,



Justice Arthur Hamilton

