



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**

[2020] QIC (A) 3 on appeal from [2020] QIC (F) 9

**IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE
APPELLATE DIVISION**

26 July 2020

Case No 12 of 2020 (on appeal from CTFIC0012/2020)

Between:

AYCAN RICHARDS

Applicant/Respondent in the appeal

v

INTERNATIONAL FINANCIAL SERVICES QATAR LLC

Respondent/Applicant in the appeal

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice William Blair

Justice Rashid Al Anezi

ORDER ON PERMISSION TO APPEAL

1. Permission to appeal against the decision of the First Instance Circuit is refused.

JUDGMENT

1. In a written application made on 23 July 2020, the Applicant (“IFSQ”) seeks permission to appeal from the decision of the First Instance Circuit (Justices Arthur Hamilton, Fritz Brand and Helen Mountfield) given on 20 July 2020 which ordered IFSQ to reissue to the Respondent to this application and the claimant before the First Instance Circuit (Aycan Richards) (i) the No-Objection Certificate (“NOC”) letter and (ii) all support documentation to facilitate her transfer of sponsorship which was originally issued by IFSQ. The matter is very urgent, and this Court considered the application with considerable expedition, giving its decision on 26 July 2020.
2. Aycan Richards, a citizen of the United Kingdom, resides in Qatar and holds a residence permit due to expire on 27 August 2020. She was, until 31 October 2019, in the employment of IFSQ, an entity established in the Qatar Financial Centre (“QFC”); she is sponsored by it. She wishes to remain in Qatar and obtain sponsored employment from another employer. As set out in the judgment of the First Instance Circuit, the QFC Immigration Regulations make provision for the transfer of a sponsored employee to another employer under conditions set out in the Regulations and in the QFC Employment Code. Article 10 of that Employment Code provides:

“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”.
3. Her new employer was to be a new Qatari company, Oscar Management Services and Consultancy L.L.C., that was being formed by her; that took a period of time, and the transfer of sponsorship could not be processed until it was formed.

4. IFSQ provided her with a NOC, dated 19 January 2020, on 19 January 2020; her evidence was that she had 90 days in which to complete the transfer. The effect of the Covid-19 pandemic however was to bring about delays and suspensions of procedures, as has occurred worldwide.
5. Her evidence was that she eventually managed in April 2020 to lodge with the appropriate authority the documents for the transfer of sponsorship, including the NOC provided by IFSQ; that subsequently she was told in late June 2020 that she had to start the application through a new process brought in as a consequence of the Covid-19 pandemic, but the NOC was not returned. She then sought a new NOC from IFSQ in early July 2020, but it declined to issue one.
6. On 14 July 2020 Aycan Richards, acting in person and without legal representation, filed an application with the Court in which she requested the Court “to ask IFSQ to issue the NOC which is my right and their obligation according to Article 10 [of the Code]”. She sought urgent relief as transfers of sponsorship had to be made no later than 27 July 2020, as that is 30 days before the expiry of her residence permit on 27 August 2020. For that purpose, she needed from IFSQ a new NOC and supporting documentation. The application was served on IFSQ that day.
7. The First Instance Circuit made an Order for Directions on 15 July 2020 ordering IFSQ to serve any response by 16 July 2020. On 16 July 2020 IFSQ, which also was not legally represented, responded through its Head of Administration, to inform the First Instance Circuit that it was fully committed to providing support to the Court and it sent its correspondence with the QFC. It did not make any other response to the claim.
8. The First Instance Circuit therefore inquired on the same day whether IFSQ formally opposed the application and if so on what grounds. A prompt response was sought in view of the urgency of the application and the impending weekend. IFSQ responded the same day through the Head of Administration in the following terms:

I can confirm that IFS Qatar formally opposes any claims in this matter based on QFC ESO and QFC Immigration Department rules and guidelines. IFS Qatar has followed QFC Immigration Department instructions earlier this week.

Though given the opportunity, IFSQ did not explain the grounds on which it opposed the application. It is clear that there is another dispute between Aycan Richards and IFSQ, but it was and is accepted to be irrelevant to the application made by Aycan Richards.

9. In the light of the urgency of the application the First Instance Circuit handed down its judgment on Monday 20 July 2020. It concluded that IFSQ was required under the Employment Code, in all the circumstances, to reissue the NOC and any documents necessary to effect the transfer of sponsorship that it provided in 2019 (paragraph 14). It was therefore just in all the circumstances to Order IFSQ to do so.
10. In its application for permission to appeal, IFSQ contended that substantial evidence was missed out and misrepresented by the First Instance Circuit and its judgment was based on erroneous, incomplete facts and “within a rush without collecting sufficient evidence”; the reasons were not proportionately evaluated and adequately scaled to the potential consequences of the decision which would lead to a significant risk to the credibility of the rule of law. It has sought to adduce further evidence in support of the position it wants to take, namely that it complied with the obligation under the Code and that the position that Aycan Richards found herself in was entirely one of her own making. It claimed that Aycan Richards had caused it a lot of trouble and had removed 100 client accounts. There has also been further email correspondence from IFSQ which we have read.
11. We refuse permission to appeal.
12. There is no basis on which this Court could consider fresh evidence. In explaining its response to the First Instance Circuit, IFSQ states that it did not receive a formal notification of the request of the First Instance Circuit and asserts that IFSQ’s management was under the impression that the request was for basic information only. It contends that the IFSQ Head of Administration had no rights to represent the company in legal matters outside the firm and that person’s authority was limited to the provision of basic information. It further states that it did not have the chance to seek and provide legal representation. The contention so made provides no arguable basis

for the admission of fresh evidence. First, it is clear from the submission of IFSQ that the management knew of the First Instance Circuit's request but left it to the Head of Administration to reply. Second, even if it had been unaware, that does not excuse its failure. It is the duty of every QFC entity to put in place a proper system for dealing with requests by the Court. Third, the matter was obviously one of urgency; if lack of time to obtain legal representation had been the reason for its failure to reply, it should have made this point to the Court and sought further time. The QFC is a world class financial centre and this Court, as the court for the QFC, will act with the necessary expedition in the same way as the courts do in London, New York, and Singapore. Firms in the QFC should understand that it is essential to the working of a financial centre that responses to the requests of the Court are complied with in the same way as would be expected in other such centres.

13. As the further evidence is inadmissible, we have considered whether, on the evidence before the First Instance Circuit, there was an ample basis for making the Order and conclude that there was. We have considered on the basis of that evidence whether there are any substantial grounds for considering that the decision of the First Instance Circuit was erroneous and would result in substantial injustice, as set out in Article 35 (2) of the Qatar Financial Centre Civil and Commercial Court Regulations and Procedural Rules and paragraph 27 of *Leonardo v Doha Bank Assurance Company* [2020] QIC (A) 1. On the basis of the evidence before the First Instance Circuit there is no basis for contending that the decision was erroneous or would result in substantial injustice.
14. In any event, if we had taken the view that this Court on the hearing of the appeal might admit the fresh evidence, we do not consider that such fresh evidence as has been sent to the Court provides any basis for contending that the decision of the First Instance Circuit was erroneous or would result in substantial injustice.
15. The whole of the evidence, including the fresh evidence, supports the conclusion of the First Instance Circuit that the loss of the original NOC occurred without the fault of Aycan Richards; the delays on the part of Aycan Richards were plainly explicable and the effect of the decisions as a result of the Covid-19 pandemic are well known. Additionally, she says that her mobility had been affected by an accident. In such circumstances, we cannot see any basis for contending that the First Instance Circuit

was in error in concluding that the provision of copies was required and that IFSQ were required under Article 10 of the Employment Code to provide the NOC and any other necessary documents.

16. We have carefully examined the further material produced to us by IFSQ; there is nothing in this which shows that any official body has advised IFSQ that if it were to reissue the documents in furtherance of any Order of the First Instance Circuit, it would infringe any immigration rule or procedure. There is therefore no substantial ground, even on the new material put before us in the application for permission to appeal, to consider that the decision of the First Instance Circuit was erroneous or would result in substantial injustice.

17. We would add that it will be very exceptional for the Court to intervene in a dispute involving immigration matters. The present case is exceptional for the reasons, including the pandemic, given above, and the First Instance Circuit has ordered no more than IFSQ says it has already done. As already noted, we fully realise that there is a wider dispute between the parties, and nothing in this judgment should be taken as expressing any views as to the merits of either party to that dispute. But it is important now that this particular dispute is resolved.

By the Court,



Lord Thomas of Cwmgiedd
President of the Court

