

Immigration Appeals Board Division II

Today 13th April, 2022

In the acts of the appeal In the name [REDACTED];

[REDACTED] for appellant;

Inspector [REDACTED] for the Principal Immigration Officer;

During sitting held on the 7th of April, 2022, appellants legal representatives requested the Immigration Appeals Board to declare appellants detention to be unlawful since it is beyond the period prescribed by law and to order his immediate release.

The Immigration Appeals Board requested the Principal Immigration Officer as represented to file their submissions, which submission were duly filed.

Timeline of events

Appellant arrived in Malta during the month of September 2019. Appellant entered Malta illegally by boat. Upon arrival appellant declared to be a minor stating that his date of birth to be the 01st January 2003. To date appellant is an adult.

Appellants legal representatives claim that upon his arrival in Malta, appellant was detained. The Principal Immigration Officer claims that appellant was not issued with a detention order, however he was held at Safi detention centre for medical clearance.

The Principal Immigration Officer as represented stated that appellant was issued with a Return decision and a removal order dated 10th June, 2020, this after appellant failed to apply for asylum.

On the 8th of October, 2020, AWAS declared appellant to be an adult. Appellant appealed this decision and filed an age assessment appeal on the 12th of October, 2020.

Appellant applied for asylum on the 22nd of October, 2020¹ and was released from detention on the 7th of November, 2020 (detention on the basis of the removal order issued on the 10th of June, 2020).

¹ Appellant expressed the wish to apply for asylum since his arrival in Malta, September 2019 but effectively lodged his asylum application on the 22nd of October, 2020.

On the 5th of August, 2021 appellant was apprehended at Malta International Airport trying to embark on a flight to Italy and in possession of fraudulent documents. Appellant was handed a six month effective prison incarceration. Upon his release from Corradino Correctional facility on the 6th of December, 2021, appellants return decision issued on the 10th of June, 2020 was re-activated and appellant was detained in view of the return decision.

Appellant was issued with a detention order dated 01st of April, 2022 converting the return decision into a detention order until appellants age assessment appeal is decided. Once the age assessment appeal is decided, appellants asylum application can proceed.

Time frame of events

Appellant filed his asylum application on the 22nd of October 2020 following decision taken on the 8th of October, 2020 wherein appellant was declared an adult by AWAS. Appellant qualified as an applicant on the day he filed his asylum application, that is on the 22nd of October 2020. Prior to this date no asylum application had been filed by appellant. Appellant was released from Safi on the 7th of November, 2020. Prior to the 22nd of October, 2020, appellant was issued with a return decision and removal order dated 10th of June, 2020. Thus appellant was kept in detention pending his removal for 5 months (10th June, 2020 until the 7th of November, 2020). Prior to the issuance of the return decision, although appellant was held at Safi detention centre, no detention order had been issued in his regard. From the date of his release being the 7th of November, 2020 it did not result to the Immigration Appeals Board that appellant was following the asylum application filed. Also, it does not result that appellant was following or participating in the age assessment appeal presented by him on the 12th of October, 2020.

On the 5th of August, 2021 appellant chose to flee from Malta in an illegal manner and was caught at Malta International airport and was handed a six month effective incarceration at Corradino Correctional Facility.

On the 6th of December, 2021 upon appellants release from Corradino Correctional Facility, return decision issued on the 10th of June, 2020 was re-activated and appellant has been in detention on the basis of the return decision since the 6th of December, 2021 to date. Return decision was converted into a detention order on the 01st of April, 2022, following appellants request to proceed with his asylum application and also pending the outcome of the age assessment appeal.

In his appeal appellant has brought forward the following grievances:

Unlawfully detained for 5 months beyond the period prescribed by law and subsequently detained for a further 4 months under a return decision and removal order whilst still an asylum seeker

Once again it must be highlighted that appellant applied for asylum only after AWAS declared him to be an adult being on the 8th of October 2020. Asylum application was filed on the 22nd of October, 2020. Upon arrival appellant was detained until medical clearance and according to the Principal Immigration Officer no detention order was issued. Nonetheless appellant was still detained at Safi upon his arrival until the 7th of November, 2020 – total of 14 months. Up until the 10th of June, 2020 appellant was detained and from the 10th of June 2020, appellant was detained following the issuance of the return decision. Appellant has been once more detained following the re-activation of the return decision since the 6th of December, 2021 until the 01st of April, 2022 – 4 months. Since the 01st of April, 2022, appellant is being detained following the conversion of the return decision into a detention order.

That he was detained with adults, despite the fact he claimed to be a minor upon his arrival

Upon his arrival in Malta in September 2019, appellant claimed to be a minor being born on the 01st of January, 2003. So upon arrival appellant was 16 years old. Article 15 (3) states that unaccompanied minors aged sixteen years or over maybe placed in accommodation centres for adult asylum seeker.

No review was carried out by the Immigration Appeals Board to determine the legality of his detention at any stage of his detention

The Immigration Appeals Board was never notified of a detention order issued upon appellants arrival in Malta nor at any stage prior to the detention order issued on the 01st of April, 2022, thus the Immigration Appeals Board could never intervene in either the review nor the determination of the legality or illegality of a detention order. It must be pointed out that it is the Principal Immigration Officer who issues detention orders and the Immigration Appeals Board is notified upon the issuance of such – in this case no detention order was issued against appellant until the 01st of April, 2022.

Appellant was issued with two removal orders while still an asylum seeker

Appellant applied for asylum on the 22nd of October, 2020. Return decision and removal order was issued on the 10th of June, 2020 and re-activated upon his release from prison on the 6th of December, 2021. It does not result to the Immigration Appeals Board that two return decisions were issued. Re-activated return decision was converted into a detention order on the 01st of April, 2022.

Legal representation

In their submissions the Principal Immigration Officer stated that throughout the proceedings, dating back to appellants arrival in Malta, appellant was legally assisted by JRS and subsequently by ADITUS. The Immigration Appeals Board stands to reason that appellant was

legally represented and stands to reason that appellant was receiving legal advice on how to proceed in respect to applying for asylum and his participation in the age assessment appeal. It does not result to this Board that appellant showed any interest in pursuing both, his asylum application and the age assessment appeal.

Decide

The Immigration Appeals Board confirms that the detention order issued on the 01st of April, 2022 to be legal this in view of the fact that the risk of absconding is real, also considering the fact that appellant tried to abscond from Malta to be later apprehended and handed a 6 month effective incarceration.

Nonetheless, the Immigration Appeals Board in view of the fact that appellants age assessment is still ongoing, and until the pronouncement of the judgement, presumption is that appellant is to be regarded as a minor. In this regard and with immediate effect the Immigration Appeals Board orders appellant to be shifted to the buffer zone within AWAS Open Centre under those conditions that are deemed appropriate and necessary by AWAS.

[REDACTED]

Chairperson Immigration Appeals Board Division II

This decision in parte is to be emailed to appellants legal representatives, Inspector [REDACTED]
[REDACTED] PIO and [REDACTED] AWAS.