



Neutral Citation: [2025] CIGC (Civ) 11

G0030 OF 2025

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

BETWEEN:

ADDRIAN ARIAS HERNANDEZ

Applicant

AND:

THE IMMIGRATION APPEALS TRIBUNAL

Respondent

Coram: Hon. Justice Marlene Carter

Appearances: Mr. Dennis Brady, instructed by Ms. Martha Rankine for the Applicant
Ms. Celia Middleton for the Respondent

Heard: 18 March 2025

Ruling: 25 March 2025

*Immigration (Transition) Act (2002 Revision), Section 37 (1) – Immigration Regulations
(2019 Revision) - Application for Permanent Residence – Grand Court Rules (1995
Revision), O.3 r.5 – - Leave to extend time to appeal*

RULING**Background**

1. On 23 March 2021, the Applicant applied to the Director of Workforce Opportunities and Residency Cayman (“WORC”) for a Residency and Employment Certificate pursuant to Section 37 (1) of the Immigration (Transition) Act (2002 Revision) (“the Act”).
2. On 21 June 2023, the Applicant was informed that his application had been refused. The Applicant did not meet the minimum requirement of 110 points for the grant of Permanent Residence (“PR”). The Applicant had attained 65.08 points.
3. On 17 July 2023, the Applicant filed an appeal of that initial decision with the Immigration Appeals Tribunal (the “IAT”). On 18 October 2024, the IAT notified the Applicant of the dismissal of his appeal (the Decision”).
4. The IAT had, after having requested and received further information from the Applicant, proceeded to a hearing de novo and determined that the Applicant had accumulated 91.08 points under the criteria set out in Schedule 2 to the Immigration Regulations 2019 Revision (the “Regulations”).
5. The IAT advised the Applicant of his right to appeal to the Grand Court pursuant to Section 23 (2) of the Act. He was also advised that such an appeal must be filed within twenty-eight (28) days pursuant to Order 55 rule 4(2) of the Grand Court Rules (1995 Revision) (“the Rules”).
6. The Applicant did not file his appeal to the Grand Court within the requisite twenty-eight (28) days as advised.
7. On 29 January 2025, the Applicant filed the instant application for leave to extend the time to appeal the Decision. This application was filed one hundred and three (103) days from the date of the Decision and seventy-five (75) days in excess or after the 28-day deadline imposed by the Rules.
8. The draft notice of originating motion states the following as the orders to be sought by the Applicant:

“1. The decision of the Respondent dated 18 October 2024 to dismiss the Appellant's appeal against the decision of the Director of WORC ("Director") dated 21 June 2023 to refuse the Appellant's application for the grant of permanent residency ("the Appeal Decision") was wrong in law, unreasonable and/or irrational.

2. The Appeal Decision should be remitted to the Respondent to be reconsidered at a rehearing of the Appellant's application

for the grant of permanent residency by way of a hearing de novo.

3. *The Appeal Decision violates the Appellant's rights under Section 9 of the Bill of Rights. The Appellant and his family, including his wife and young children, will be forced to leave the Cayman Islands, leaving behind his home, the life he built here, and friends without any country to return to that his young children have any knowledge or experience of.*
4. *Section 37(3) of the Immigration (Transition) Act 2021 is incompatible with Section 9 of the Bill of Rights.”*

The statutory framework

9. GCR Order 55 rule 4 states, “*In the absence of any other statutory time limit the notice must be served and the appeal entered within 28 days after the date of the order determination award or other decision against which the appeal is brought*”. This is the time within which the appeal must be entered, and the notice of motion relating to the same must be served.
10. GCR Order 3 rule 5 gives the Grand Court wide discretion to enlarge the time fixed by the Rules for doing any act in any proceedings on such terms as it thinks just.
11. In **Elysia Tara Murray-Forbes v IAT**¹, the court, relying on **Smith v Immigration Appeals Tribunal** (unreported, 02/01/24), noted as follows:

“Any application for an extension of time to appeal would have to deal with the reasons why the time limit was not complied with, the merits of the appeal and the prejudice to the applicant if the extension is not granted and to the respondent if it is. In the absence of evidence to support such an application, there is nothing on which to found any exercise of the court’s discretion”
12. In the case of **Frank Hall Homes v Planning Appeals Tribunal & the Central Planning Authority**², Panton J. (Actg.), applying **Finnegan v Parkside Health Authority** [1988] 1 All ER 595, stated:

“In exercising its discretion to extend the time for the filing of an appeal, the court must consider the length of the delay, the reasons for it, whether there is an arguable case for the appeal, and the degree of potential prejudice to other parties if time is extended. Since the overriding principle for the court is that justice must be done, it may grant an extension notwithstanding the absence of a

¹ G2023-0257, dated 18 July 2024

² [2001 CILR Note 5]

good reason for the delay if there is a serious legal point to be tried and the delay consists of a few days only.”

The Applicant’s submissions

13. The Applicant acknowledges the delay in filing his appeal. In his affidavit filed in support of the application for leave, the Applicant states as follows:

“...we were unaware that we had the option to appeal to the courts the refusal of my application for the grant of PR. After receiving legal advice about my option to appeal I realized that the deadline had long passed and I understand that I am over 75 days late however I am pleading for the opportunity to submit my appeal despite this delay as I believe I have a reasonable chance of success for the reasons outlined below. Additionally, this appeal is my only option and last chance to fight for the right to remain in this country with my family, which is our children's only home.”

14. This was the only reason advanced by the Applicant for the delay. Counsel for the Applicant stated, in written submissions, that the delay was not intentionally orchestrated to delay prosecuting the case. Counsel submits that the length of the delay in this case was not inordinate. She submits further that the Applicant, on realizing his mistake, took prompt action to instruct his attorneys to apply for leave to extend the time within which he could appeal.
15. Counsel also appeared to refer to the reason for the delay as a mistake on the part of the Applicant. For this latter reason, she submitted that the court should be more lenient in its approach. Counsel emphasized the Applicant’s unfamiliarity with his right to appeal. She states that it was this lack of awareness which arose from his status as a lay person without formal legal training or expertise. She went further to state that the Applicant was not adequately informed about the legal avenues available to him
16. The main thrust of Counsel's argument is that there is an arguable case for an appeal. For this reason, even if the court were to find that there was no good reason for the delay, this should not preclude the court's exercise of its discretion to grant leave to extend time to appeal.
17. Counsel noted that the Applicant obtained 91.08 points of the 110 required for the grant of permanent residence as per the criteria set out in Schedule 2 of the Regulations. Counsel submits that the IAT should have awarded the Applicant further points up to a maximum of at least 20 points under Factor 5 of Schedule 2. Factor 5 of Schedule 2 is concerned with the award of points for “*Community Minded/Integration into the Caymanian Community*”.

18. The Applicant submitted that he volunteered with the West Bay West Enhancement Community Council (“the Council”), an organization established to benefit and enhance the lives of the people of West Bay. Schedule 2, Factor 5 states that points could be awarded for activities related to “*Volunteering for non-profit, charitable or voluntary organisations.*”
19. The IAT determined that the letter from the Council specifying the Applicant's activities “*did not meet the criteria set out in the Regulations to allow for the assessment of points when considering that it is not a Youth programme, a sponsored activity; a sports programme, an arts programme, a local service club; a local church programme; and it is not a registered Non-Profit Organisation.*”
20. The Applicant’s contention is that the Immigration Appeals Tribunal should have found that the Council qualifies as a voluntary organization. The Applicant volunteered at this organization for up to 80 hours each calendar year, the minimum number of hours per year to be considered for the award of points at Factor 5.
21. In his oral submissions at the hearing of the application, Counsel for the Applicant, Mr. Brady, submitted that the class of “*Voluntary organization*” was completely disregarded in the deliberations of the IAT, although the Applicant’s actions in the Council, were sufficiently demonstrative of his initiative and involvement in the community. He argued that the IAT’s characterization of the Applicant’s actions as merely “*enhancing a political agenda*” was unsupported and unmerited and what he characterized as a “*throwaway comment*”.
22. If the IAT had awarded the Applicant 1.5 points for each year that he had been involved with the Council, he would have received a total of 12 further points, which would have pushed his original 91.08 points to 103.08 points, leaving him 6.92 points short of the minimum 110 points necessary for the grant of permanent residence.
23. Counsel for the Applicant submitted that the IAT also erred in not having awarded the Applicant further points by reference to the explanatory note to Factor 5 of Schedule 2: “*The extent to which the applicant has successfully settled and integrated into Cayman society is assessed by reference to such qualities as adaptability motivation involvement in the community and initiative.*”
24. Counsel argued that this explanatory note is an indication that further points could be awarded to the Applicant if the Applicant can show the qualities enumerated therein. Counsel pointed to reference letters submitted on the Applicant’s behalf by three persons from the West Bay area attesting to the Applicant's character. She stated that these references highlighted the Applicant's involvement and interaction within the community and the positive impact that the Applicant has had on various community activities and initiatives. Counsel submits that if the IAT had considered these references as meeting the criteria for the further award of points

under Factor 5, the Applicant could have received up to a further eight points in this category to take his total tally to at least 111.8 points, thereby exceeding the statutory minimum for the grant of PR.

25. Counsel argues that the IAT's position that the reference letters did not meet the criteria set out in the Regulations to allow the assessment of points was wrong. She went on to state that of the three references submitted, there was one letter in which the IAT failed to award any points, yet the IAT did not indicate why it had failed to exercise its discretion to award points based on the letter's contents. In oral submissions, counsel for the Applicant, Mr. Brady, insisted that the reference letters were "*written by persons expected to know persons in the community*", the Member of Parliament for West Bay West, a former Member, Eugene Ebanks and Chesley Ebanks Snr, and they provided details relevant to the IAT's consideration.
26. With regard to prejudice to the other party, Counsel submits that there is no evidence of any prejudice or risk of prejudice to the Respondent in this case caused by the Applicant's delay in seeking leave to extend time. For all these reasons, Counsel for the Applicant submits that there is an arguable case for success on appeal.

The Respondent's submissions

27. The Respondent opposed the application for an extension of time, noting that the Applicant had failed to file his application promptly and that the delay in filing was inexcusable at 103 days after the decision of the IAT. Counsel for the Respondent submits that the reason advanced by the Applicant for delay, that he was unaware that he had the option to appeal to the court, amounts to ignorance of law which is not an excuse in and of itself to justify the delay.
28. Counsel noted that the Applicant was represented by counsel at the time his appeal was dismissed. She referred to the letter of 18 October 2024, in which the decision was communicated to the Applicant. This letter, which was addressed to the Applicant's counsel at that time, clearly indicated and referred to the Applicant's right to an appeal.
29. From the outset, Counsel for the Respondent's position was that even if the court were to find that the IAT should have awarded points for the Applicant's volunteer work with the Council, the Applicant would still not achieve the required 110 points. Counsel submits that there is no arguable case within which that 110 points could be achieved.
30. Regarding the reference letters, the Respondent argues that these letters failed to provide details which could have led the IAT to exercise its discretion to award any further points based on their content because they failed to detail or particularize

examples of any service in the categories of organizations listed in Part 2 of Factor 5 or the service as prescribed in Part 1 of Factor 5.

31. Regarding prejudice, Counsel referred to the case of **Derek Oliver Smith v. The Immigration Appeals Tribunal 2024**³ for the proposition that it is not in the interest of good administration to extend time for a challenge to a decision of a public body beyond the 28 days set by the Grand Court Rules. Counsel noted that the Applicant had failed to particularize any prejudice that not being allowed to appeal would cause, save, of course, that the Applicant would not have permission to continue to work and would be subject to Section 66(4)(c) of the Act with respect to the grant of work permits to continue his employment.

Court' considerations

(i) *Delay*

32. The length of the delay in this case is significant. The explanation advanced by the Applicant is insufficient for this court to excuse that delay. The Applicant states that he was unaware of his option to appeal and that he only became aware of this option after receiving legal advice. The letter advising of the IAT's decision was addressed to the Applicant's former attorneys. Counsel for the Applicant, in written submissions, referred to the fact of the Applicant not being "*adequately informed about the legal avenues available to him, which contributed to the prolonged timeline in pursuing his appeal.*" This appears to be a somewhat oblique reference to a deficiency in advice by previous counsel. I note, however, that this was not a matter stated by the Applicant in his affidavit in support of his application as a reason for delay. In any event, the Applicant does not appear to have sought further legal advice until mid-January 2025.
33. Counsel for the Applicant, in written submissions, refers to the court's approach in cases of mistake.⁴ I am not persuaded that there is any evidence of mistake on the part of the Applicant. Again, this was not a reason advanced by him in his affidavit in support of this application. The Applicant referred instead to his ignorance of the law regarding both his option to appeal and the time limited for such appeal.
34. I am mindful that the length and reason for the delay are not the only relevant considerations on this application for leave to extend time to appeal.

(ii) *Non-profit, charitable or voluntary organization*

35. I am persuaded by the Applicant's submissions that there is nothing in the legislation at Schedule 2, Factor 5 to preclude the inclusion of an organization such

³ 240102 GC58 of 2020

⁴ Counsel referred to Bowen L.J. in *Cropper v Smith* that: "*I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party.*"

as the Council being considered in the category a “*non-profit, charitable or voluntary organization*”.

36. In its plain and ordinary meaning, a voluntary organization is defined as: “*noun. An organization that is composed of or functions with the aid of volunteers and which provides aid or services to individuals, groups or countries.*”⁵
37. The Applicant is correct to state that the use of the word “*or*” between charitable and voluntary indicates that an organization may be nonprofit, charitable *or* voluntary to qualify for consideration. Further, there is nothing within the explanation note that could be interpreted as prohibiting an organization with some political ties being considered a voluntary organization.
38. The Applicant elaborated, in his affidavit in support of leave, that the Council provides essential support such as back-to-school books and supplies for school-aged children, the organization of grocery drives for senior citizens, and repairs homes for vulnerable and elderly community members, amongst others.
39. Those functions of the Council would appear to be well within the realm of those that Factor 5 seeks to take account of and award points, as evidence of an applicant being community-minded or integrating within the community
40. There is, therefore, an arguable case that the Applicant could receive at least 1.5 points for each of the 8 years that he volunteered with the Council. That this is the case was an alternative referred to by the IAT in its assessment. As related above even if these points were all awarded, it would not take the Applicant beyond the 110 points required.

(iii) *Award of points for further volunteer work*

41. The Applicant’s submissions in support of his being awarded further points for Factor 5 are without merit. The reference letters submitted by the Applicant are remarkably devoid of the specific requirements necessary for their consideration as supporting such an award. The explanation note, referring to such letters states:

“Letters confirming an applicant’s participation or contribution in any of the activities referred to in this factor will only be accepted from the head of the organisation or an executive member of the Board and the Caymanian beneficiary in cases of training or mentoring and must provide the required details of those activities and the amount of time the applicant was involved.”

⁵ Definition taken from Collins English Dictionary @ HarperCollins Publishers

42. Counsel Mr. Brady suggested at the hearing that a letter would be inadequate if a referee had just written that the Applicant was a “*good person and does a lot of good in [the] community and sign your name.*” However, he maintained, even in the face of the Factor 5 explanation above, that the three reference letters, two of which were just three short sentences in length, were sufficiently descriptive to enable the IAT to find that the criteria had been satisfied and allow the award of further points in this category.
43. I do not agree that the decision by the IAT not to award further points based on the reference letters showed “*the scant regard that the tribunal was giving to the applicant’s cause.*” The IAT was constrained by the legislation to award points based on the presentation of detailed information which satisfied the legislation’s requirements. The reference letters, individually and collectively, were hopelessly inadequate for that purpose.
44. None of the three letters state details of the specific activity in which the Applicant has participated or contributed. Neither do they detail the extent of the Applicant’s individual activities or participation, or the amount of time that the Applicant was involved in same. I am unable to agree that these letters “*emphasize the positive impact the Applicant has had in various community activities and initiatives.*” Instead, they allude to the Applicant’s character. The IAT was correct in its assessment that at least two of these did not meet the criteria set out in the Regulations to allow for the assessment of points.
45. I note here that the IAT sought further information from the Applicant on those matters relevant to the Factor 5 considerations. The IAT requested further details from the Applicant by letters dated 5 July 2023, and 6 February 2024. As a result, the Applicant submitted a more detailed account of his volunteer work at the Council. However, no further details to the extent required were submitted regarding any other volunteer work.
46. The IAT did not make specific reference to the third reference letter submitted by Chesley Ebanks Snr., nor provide an explanation of why it did not meet the Criteria for consideration and award of points under Factor 5. This is obviously an oversight on the part of the IAT. In any event, this court can assess whether the reference letter could satisfy the requirement of Factor 5 sufficient to determine whether there is a likelihood of further points being awarded. For the reasons set out above, there is no basis upon which the IAT, based on the letter from Mr. Chesley Ebanks Snr., could award any points without further details to encompass the necessary criteria.
47. I agree that there is no particular prejudice to the Respondent in this case.
- (iv) ***Declaration of incompatibility***
48. Counsel for the Respondent argued that this court should not embark on any consideration of the Applicant’s proposed ground of appeal concerning a breach of

the Bill of Rights. Counsel for the Applicant's oral submissions did not encompass this issue. One of the orders sought by the Applicant is a declaration of incompatibility of Section 37(3) of the Act with Section 9 of the Bill of Rights. This issue, however, has been previously ventilated before the courts. This aspect of the application does not support the Applicant's argument that there is an arguable case.

49. The position taken by the court in **Julius Joslyn Armstrong v Director of Workforce Opportunities and Residency Cayman 2024**⁶ is instructive and remains the same. Asif J. referring to the Court of Appeal's decision in *Buray and DeSousa* stated:

"36. Turning to Ms Facey-Clarke's invitation to me to make a declaration of incompatibility in this case. That seems to be completely otiose. It is not going to be of any benefit to anyone for me to make a second declaration of incompatibility in the same terms as that already made by the Court of Appeal. ...I decline to make a declaration of incompatibility in this particular case because the Court of Appeal has already done so in relation to the relevant legislation at issue."

Conclusions

50. In various cases which have come before these courts where leave to extend time to appeal has been sought, courts have emphasized that even if the Respondent was wrong in its assessment and award of points, if a court determines, after full assessment of all relevant factors, that an applicant cannot achieve the required 110 points for PR, there is no arguable case and, therefore, no need for the court to order a rehearing.
51. The delay in this case is significant and excessive. No good reason has been advanced for such a delay. The Applicant does not, on the facts, have a good arguable case, nor is there a serious legal point worth arguing such as to cause this court to exercise its discretion to allow an extension of time to file an appeal. The application is accordingly refused.



Hon. Justice Marlene I. Carter
Judge of the Grand Court

⁶ G0259/2023, dated 9 October 2024