



Neutral Citation Number: [2025] CIGC (Civ) 17

Cause No: G 2024-0139

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

BETWEEN:

BARRINGTON MARCO BROWN

Appellant

-and-

IMMIGRATION APPEALS TRIBUNAL

Respondent

Appearances: Mr Dennis Brady of Brady Attorneys at law for the Appellant
Ms Anna Russell-Knee of the Attorney General's Chambers for the Respondent

Before: The Honourable Justice Jalil Asif KC

Heard: 14 April 2025

Judgment: 24 April 2025

Immigration appeal—whether to grant extension of time to appeal

JUDGMENT

A. Introduction

1. The Appellant in this matter was refused permanent residence by the Director of Workforce Opportunities & Residency Cayman in March 2022. He pursued an appeal to the Immigration Appeal Tribunal, which was dismissed in May 2023. Time for his appeal from the Immigration Appeal Tribunal to the Grand Court expired no later than 23 June 2023. I am now asked by the Appellant to grant a very long extension of time of nearly 11 months for him to pursue his appeal to the Grand Court. This is on the basis that he asserts that he did not receive notice of the dismissal of his appeal by the Immigration Appeal Tribunal until 9 May 2024 and he thereafter promptly filed his appeal with the Grand Court on 17 May 2024.

B. Chronology

2. I take the following from the chronology helpfully prepared by Ms Anna Russell-Knee, who appeared for the Respondent, supplemented with certain matters asserted in the Appellant's Notice of Motion. Mr Dennis Brady, who appeared for the Appellant, did not disagree with any aspects of Ms Anna Russell-Knee's chronology.
3. The chronology demonstrates a lamentable approach to the proper advancement of this appeal on behalf of the Appellant.

Date	Event
12/04/21	Appellant applies to WORC for permanent residence
08/03/22	WORC notifies Appellant that permanent residence refused due to insufficient points
05/04/22	Appellant indicates intention to appeal to Immigration Appeal Tribunal
23/06/22	Appellant confirms to Immigration Appeal Tribunal Secretariat that he intends to rely on the grounds of appeal dated 05/04/22

Date	Event
11/05/23	Immigration Appeal Tribunal dismisses appeal
26/05/23	Secretariat sends Immigration Appeal Tribunal decision letter to Appellant by email
23/06/23	<i>Time for appeal to Grand Court expired</i>
Nov 23	Appellant granted permission to continue working
17/04/24	Appellant submits second application for permission to continue working
02/05/24	Appellant's application for permission to continue working refused
09/05/24	Appellant attends at WORC to question refusal of permission to continue working; orally informed that appeal to Immigration Appeal Tribunal dismissed in May 2023
17/05/24	Appellant files Notice of Motion, including request for extension of time for appeal Appellant serves Notice of Motion on Immigration Appeal Tribunal Secretariat
25/06/24	Directions hearing vacated due to Appellant's attorney's unavailability; parties requested to fix a new date promptly
30/07/24	Re-fixed directions hearing vacated at Appellant's request; Court indicates hearing should be re-listed (no response)
25/09/24	Parties provide availability to re-list directions hearing in response to request from court
27/11/24	Court indicates next available date will be in 2025 and requests Appellant to file Notice of Intention to Proceed (no response)
24/01/25	Court chases Appellant for response to 27/11/24 correspondence
28/01/25	Appellant's attorney states he has not had any instructions Court requests that Appellant's attorney clarify the position (no response)
27/03/25	Court indicates matter should be listed as soon as possible and requests availability
03/04/25	Appellant's attorney informs Court he has not heard from Appellant since 2024, will attempt to locate him and obtain instructions

Date	Event
07/04/25	Court confirms hearing listed for 1.15 pm on 14/04/25 (for Appellant's attorney's convenience); indicates that Appellant not required to serve Notice of Intention to Proceed; but Appellant must swear an affidavit explaining failure to progress matter, to be filed by 2.00 pm on 11/04/25

4. As the chronology indicates, the Appellant has not actively sought to advance this matter, and it has largely been the Court that has tried to progress the appeal towards a hearing. On the initiative of the Court, the matter finally came on for a first hearing on 14 April 2025, nearly a year after the Notice of Motion was filed. The Appellant had not sworn any affidavit to explain his failure to progress his appeal, as directed on 7 April 2025.

C. The arguments on granting an extension of time

C.1 *The Respondent's case*

5. The Respondent contends that the Court should not grant the extension of time to bring his appeal requested by the Appellant. Ms Russell-Knee reminds me that GCR O.55, r.4(2) provides that the Appellant should have served his Notice of Motion within 28 days after the refusal of his appeal by the Immigration Appeal Tribunal. As this was notified to him on 26 May 2023, time to file his Notice of Motion expired on 23 June 2023: see GCR O.55, r.4(3).
6. Secondly, Ms Russell-Knee says that the Appellant should have made an application for an extension of time for his appeal pursuant to GCR O.3, r.5 by a summons supported by affidavit evidence so that the Court could properly consider whether to grant relief: see the judgment of the learned Chief Justice in *Smith v Immigration Appeal Tribunal* (unreported, 02/01/24) emphasising that this is the correct procedural route. Ms Russell-Knee argues that the Appellant has failed to do so, instead he has simply asserted his grounds for seeking an extension of time in his Notice of Motion.
7. Ms Russell-Knee also relies on *Murray-Forbes v Immigration Appeal Tribunal* (unreported, 18/07/24) where I said at paragraph 37:

“37. 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."

She submits that the Appellant has not put any evidence before the Court to address any of these matters.

8. Ms Russell-Knee fairly accepts that the overriding principle is that justice must be done, so that the Court may grant an extension even if there is no good reason for delay if: (a) there is a serious legal point to be argued; and (b) the delay is a few days only. However, she says that neither of these factors applies in this case.
9. Turning to the facts, Ms Russell-Knee argues that the Immigration Appeal Tribunal's decision letter clearly indicated that the Appellant had a right of appeal to the Grand Court and the time limit for any such appeal. She submits that the evidence filed by the Respondent establishes that the decision letter was sent by email to the Appellant's correct email address on 26 May 2023 despite the apparent doubt on that point raised by the Appellant in his Notice of Motion. She points out that there is no evidence filed by the Appellant to support the assertion made in his Notice of Motion, which is essentially that he did not receive the Immigration Appeal Tribunal's decision until 9 May 2024. She says there is therefore no material to explain or to justify why the Court should grant the requested extension of time.
10. Ms Russell-Knee accepts that there would not be any specific prejudice to the Respondent if an extension of time were granted, but she argues that it would not be in the interests of good administration to grant the required extension, given the 28 day time limit in GCR O.55 and the extent of the Appellant's delay in commencing his appeal in this case.
11. Finally, without elaboration, Ms Russell-Knee contends that the Appellant does not have a good arguable case, which I take to be intended to mean that there is no merit in his appeal.

C.2 The Appellant's case

12. Mr Brady says that the Appellant was unaware of the Immigration Appeal Tribunal's decision letter in May 2023 and only learned of it on 9 May 2024. The Appellant disputes that he received the email from the Immigration Appeal Tribunal in May 2023 on the basis that the email address used was incorrect.

13. Mr Brady submits that time for the Appellant's appeal should run from the date when the Appellant learned of the Immigration Appeal Tribunal's decision, in other words on 9 May 2024. He contends that the Appellant very promptly instructed attorneys and prepared and filed his Notice of Motion as soon as he learned that his appeal to the Immigration Appeal Tribunal had been dismissed, namely within 8 days.
14. Mr Brady draws attention to the grant of permission to continue work in the Appellant's favour in November 2023, which is difficult to reconcile with the Immigration Appeal Tribunal's dismissal of his appeal in May 2023 and on which the Applicant appears to rely as supporting his ignorance of the outcome of his appeal.
15. Mr Brady says that it is in the interests of justice that I should allow the Appellant the opportunity to advance his appeal to a determination on its merits. However, there is very little in the Notice of Motion to indicate what are the substantive grounds of appeal to be advanced. Further, Mr Brady did not indicate to me in argument what are the matters to be raised on the Appellant's behalf that are said to be likely to result in his appeal being successful.
16. Mr Brady relied on the admitted absence of prejudice to the Respondent.
17. Finally, Mr Brady said that any failure to file an affidavit in support of his position was not the fault of the Appellant but was Mr Brady's responsibility.

D. Analysis and decision

18. GCR O.55, r.4(3) is clear that time for filing runs from the date on which notice of the decision under appeal was given; it does not refer to the date when the appellant learns of the decision, i.e. the focus is on the sending of notification not on its receipt. I therefore reject Mr Brady's submission that I should treat the Appellant's time for commencing his appeal as running from 9 May 2024. Time should be treated as running from 26 May 2023, the date when the Secretariat sent the email to the Appellant to notify him of decision of the Immigration Appeal Tribunal to dismiss his appeal.
19. Time for the Appellant's appeal therefore ran out no later than 23 June 2023. To be able to pursue his appeal, the Appellant requires an extension of time of nearly 11 months.

20. As stated by the Chief Justice in *Smith v Immigration Appeal Tribunal*, the Appellant should have applied for an extension of time by summons under GCR O.3, r.5, supported by relevant affidavit evidence. The affidavit should have addressed the reasons why the time limit in GCR O.55, r.4(2) was not complied with, the merits of the appeal, the prejudice to the Appellant if the requested extension were not granted and the prejudice to the Respondent if it were: see *Murray-Forbes v Immigration Appeal Tribunal*.
21. The Appellant has not complied with these procedural and evidential requirements. The result is that there is no material properly before the Court on which it can exercise its discretion to extend time. The Appellant's Notice of Motion should therefore be dismissed.
22. Notwithstanding that decision, I now go on to consider the arguments put forward on behalf of the Appellant, bearing in mind that they consist of assertion and are unsupported by any evidence.
23. I am satisfied on the evidence in the affidavit of Ms Trisha Cuffy that the email from the Immigration Appeal Tribunal Secretariat notifying the Appellant that his appeal to the Immigration Appeal Tribunal had been dismissed was sent to the correct email address for the Appellant on 26 May 2023. The apparent error in the address is explained by the difference between the addresses recorded within Ms Cuffy's computerised address book as the "display" address and the actual sending address.
24. It is correct that the Appellant's behaviour during 2023 and 2024 in submitting applications for permission to continue working, and obtaining such permission in November 2023, is consistent with his case that he was unaware of the outcome of his appeal to the Immigration Appeal Tribunal. However, the Appellant has not engaged with Ms Cuffy's evidence and has not submitted any evidence to explain why the Immigration Appeal Tribunal's email would not have come to his attention in May 2023. I note that emails within the bundle sent by the Appellant during 2022 indicate that he was able to access his emails via his Galaxy mobile phone.
25. There are no details in the Appellant's Notice of Motion of the substantive grounds of appeal that he intends to run. I record here that any appeal would have to be on a point of law only, and none has been identified in the Appellant's Notice of Motion or by Mr Brady in argument. There is therefore nothing to demonstrate that there is any merit in the Appellant's appeal, and there is nothing to suggest

that the Appellant has a serious legal point to argue that might be sufficient to outweigh his delay in commencing his appeal.

26. The most that can be said is that the Appellant's Notice of Motion asserts:

"The Appellant was told by an agent of the Respondent, that he had been asked to provide any change in his circumstances and to provide any additional information since lodging his appeal, particularly under the headings of Factor 2B Education and Factor 5 Community Involvement, and these documents were submitted via email attachment. The Appellant produces a copy of the email as Exhibit "BB1" to include copies of the actual documents that were requested."

If it were factually correct, as the Appellant appears to intend to allege, that the Immigration Appeal Tribunal had decided the Appellant's appeal before receipt of updating documents and in the knowledge that he intended to submit them, then that might possibly provide some basis for pursuing an appeal.

27. However, there is no exhibit BB1 attached to the Notice of Motion evidencing that the Defendant submitted any further documents to the Immigration Appeal Tribunal and when asked about this, Mr Brady said that this passage had been included in the Notice of Motion in the expectation that such documents would be obtained in due course: he did not suggest that there are such documents in existence. I was not shown any such documents during the hearing on 14 April 2025.

28. Moreover, the documents in the hearing bundle contradict the factual assertion in the Notice of Motion.

28.1 On 8 March 2022, the Appellant was informed by WORC that his application for permanent residency had been refused.

28.2 On 5 April 2022, the Appellant wrote to the Secretariat of the Immigration Appeal Tribunal indicating that he intended to appeal. His letter indicated that he enclosed a copy of his application for permanent residency and the fee payable. The copy of the letter in the bundle is stamped as received by the Secretariat on 5 April 2022. A receipt in the bundle indicates that the Appellant's cheque was deposited by the Secretariat on 7 April 2022.

28.3 The Appellant also prepared a more detailed letter to the Immigration Appeal Tribunal dated 5 April 2022 confirming his appeal and setting out his grounds of appeal. The copy in the bundle does not have any stamp to indicate when it was received. It is unclear when the Appellant

submitted this letter to the Immigration Appeal Tribunal, but he probably sent it on 22 June 2022 as explained later in this judgment.

28.4 On 12 April 2022, WORC sent the Appellant a copy of the Appeal Statement outlining the Director's reasons for refusing the Appellant's application for permanent residency. The stated reasons included that the Appellant had not provided proof of his asserted educational attainment and his community involvement.

28.5 On 21 June 2022, the Immigration Appeal Tribunal wrote to the Appellant complaining that the deadline for the Appellant's grounds of appeal had expired on 9 June 2022 and enquiring whether the Appellant intended to submit any grounds of appeal. This suggests that the Appellant had not yet submitted his more detailed letter dated 5 April 2022 setting out his grounds of appeal.

28.6 On 22 June 2022, the Appellant forwarded to the Immigration Appeal Tribunal a PDF copy of his "*letter detailing my grounds of appeal*". There is no copy of separate grounds of appeal or any letter from the Appellant dated on or about 22 June 2022 in the bundle. I therefore conclude that the document attached to his email was most likely his second letter dated 5 April 2022.

28.7 Following a telephone conversation between the Appellant and the Immigration Appeal Tribunal Secretariat, the Appellant wrote to the Immigration Appeal Tribunal later on 22 June 2022 stating that "*my circumstances have not changed since I submitted my appeal.*"

28.8 The Immigration Appeal Tribunal Secretariat responded the same day to ask whether the Appellant wished to rely on the documents previously submitted, to which the Appellant replied on 23 June 2022 that that was correct.

28.9 There is no indication of any further communication between the Appellant and the Immigration Appeal Tribunal before his appeal was considered and determined in May 2023.

29. Thus, there is no indication that the Appellant ever intended or communicated to the Immigration Appeal Tribunal that he wished to submit additional documents or information to prove his educational attainment and his community involvement. To the contrary, and contradicting what is stated in his Notice of Motion, the contemporaneous correspondence indicates that the Appellant positively stated that he did not wish to submit any further material in support of his appeal.

30. I therefore conclude that there is no discernible merit in the Appellant's proposed appeal.

31. Finally, I note the Appellant's dilatory conduct of his intended appeal, as disclosed by the chronology set out earlier in this judgment. If I were considering the exercise of my discretion, I would have taken into account that the Appellant has not complied with the requirement in the overriding objective to advance his appeal expeditiously. Moreover, the repeated vacation of hearings that have been fixed and his lack of engagement with the appeal has caused the Respondent and the Court and its staff to have to spend considerable time trying to have the matter listed and progressed, wasting the Respondent's limited resources and taking up valuable time of the Respondent and the Court that could have been devoted to the cases of other deserving litigants.
32. Accordingly, for the reasons set out in this judgment, the Appellant's application for an extension of time for his Notice of Motion is refused and his Notice of Motion is dismissed.
33. I have not been informed that the Appellant is in receipt of legal aid. I therefore order that the Appellant should pay the Respondent's costs of the action to be taxed on the standard basis, if not agreed.

Dated 24 April 2025



**THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT**