



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**G0128 OF 2024**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO SEEK  
JUDICIAL REVIEW, GCR ORDER 53, R 2, R 3**

**IN THE MATTER OF THE BILL OF RIGHTS SECTIONS 13 (3)  
CONSTITUTION OF THE CAYMAN ISLANDS ORDER 2009**

**IMMIGRATION (TRANSITION) ACT (2022 REVISION)**

**BETWEEN:**

**HOWARD ANTONY BARROCKS**

**Applicant**

**AND:**

**WORKFORCE OPPORTUNITIES RESIDENCY, CAYMAN (WORC)  
CAYMAN ISLANDS GOVERNMENT  
DIRECTOR OF WORC, JEREMY SCOTT**

**Respondents**

**ON THE PAPERS**

**Before: Hon Justice Marlene I. Carter**

**Parties: Ms. Kathleen Ryan for the Applicant**

**Ruling: 12 June 2024**

**Ruling on Application for Leave for Judicial Review**

1. On 30 April 2024, the Applicant filed an application seeking leave to apply for judicial review of the decision of the Director of the Workplace Opportunities and Residency Cayman (WORC) (hereinafter “**the Director**”) dated 19 December 2023, refusing an application by the Applicant to permanently reside in the Cayman Islands as the surviving spouse of a Caymanian (hereinafter “**the Decision**”).

2. The Applicant seeks to set aside the Decision on the ground that it was unlawful, irrational, disproportionate and unreasonable.
3. The Applicant was married on 24 June 2021. His wife, who passed away on 14 April 2023, was Caymanian. The application details as follows:

*“4. On 12th July 2023 the Applicant submitted an application for Permanent Residency under section 28 (8) of the Immigration (Transition) Act (2022 Revision) on the ground that the marriage had subsisted for less than seven (7) years, and he was a surviving spouse of a Caymanian.*

...

*6. On 19th December 2023, the Applicant was notified by letter that his application for Permanent Residency had been refused by the Director of Workforce Opportunities & Residency Cayman (“WORC”). The letter of refusal stated that at the time of Ms. Bell’s passing the Plaintiff’s marriage was not intact.*

...

*7. The letter informed the Applicant that it was for these reasons that the Director is of the view that the marriage was not intact immediately preceding the wife’s death. Accordingly, therefore the Applicant’s application for permanent residency under section 28 (8) of the Immigration (Transition) Act (2022 Revision) was refused.*

*8. The Applicant avers that at no time before receiving the letter of refusal, was he contacted by a representative of WORC, to invite him to an interview to discuss both his application and the department’s concerns with the stability of his marriage before his wife’s passing.”*

4. The Applicant submits that the Decision was made without first providing him with an opportunity to rebut the matters referred to by the Director as informing the Decision. He also preys in aid of his application Section 13 of the Cayman Islands Constitution regarding the process for orders for the removal of persons from the Islands.
5. The application for leave was first placed before this Court on 9 May 2024. It was apparent to the Court that the Pre-Action Protocol<sup>1</sup> (“**the Protocol**”) had not been complied with. An explanation was sought from Counsel for such noncompliance. On 30 May 2024, Counsel responded to the

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<sup>1</sup> GCR Order 53 as read with Practice Direction no. 4 of 2013

inquiry.<sup>2</sup> Counsel explained that in the particular circumstances of this case, Counsel took the view that the Protocol was not appropriate since it is the Applicant's submission that the Director does not have the legal power to change the Decision. Without making any determination on that issue, the Court's view is that, in any event, non-compliance with the Protocol is not determinative of an application for leave.

6. No issue arises regarding the Applicant's standing to bring this application. I am satisfied that, pursuant to O.53, r.3 (7), the Applicant has a sufficient interest in the matter to which this application relates.

### Delay

7. The decision against which leave to apply for judicial review is sought was made on 19 December 2023. Grand Court Rules Order 53, r.4 (1) mandates as follows:

***“Delay in applying for relief (O.53, r.4)***

*4. (1) An application for leave to apply for judicial review shall be made promptly and in any event within 3 months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.”*

8. In the present case, the Applicant set out in his affidavit in support of the application at paragraph 46, that when he was informed of the Decision, he was also advised that he had a right to appeal to the Immigration Appeals Tribunal within twenty-eight (28) days from the communication of the Decision to him.
9. The Applicant states:

*‘47. On 12th January 2024 I filed a Notice of Appeal with the Immigration Appeals Tribunal.*

*48. On 7th February 2024 Ms. Kim Bullings, Cert. Hon., Clerk of the Cabinet, Government Administration Building, informed my lawyer that,*

*“after careful review of the decision letter from WORC I write to advise that the decision from the Director of WOR C indicates that Mr. Barracks has the right of appeal to the Tribunal, the language used in section 21 (1) of the Immigration (Transition) Act (2022 Revision) clarifies that the Tribunal's jurisdiction to hear*

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<sup>2</sup> The Court takes no issue with this delay since the Court understands that Counsel for the Applicant was dealing with a family bereavement.

*appeals from decisions of the Director or his designate is limited to decisions made under the sections of the Act specified in section 21(1), unless specified otherwise. The Tribunal therefore does not have the discretion under the Act (directly or otherwise) to hear appeals by those aggrieved by a refusal by the Director of WORC or his designate under Section 28(8) of the Act, as the discretion to do so is not explicitly included in the Act."*

10. The 3-month period following the Decision under challenge, within which time an application for leave should have been brought, pursuant to O.53, r.4(1), expired on 19 March 2024, approximately six (6) weeks after the Applicant was informed that there was no appeal to the Immigration Appeal Tribunal. The Applicant was represented by Counsel when he applied to the Director to reside permanently in the Islands. The indication from the Clerk of the Cabinet was communicated directly to his attorney, who represents him on the instant application.
11. Having had the indication from the Clerk of the Cabinet on 7 February 2024, it is not apparent from the application for leave nor the affidavit in support thereof why the Applicant did not file the instant application by the required date of 19 March 2024. Further, there is no indication why, after 19 March 2024, the application was not filed until 30 April 2024.
12. The Applicant did not seek leave of the Court to file the application for leave out of time, nor did the application address the need for good reason why the application was not filed in time. Without some reason being advanced before this Court, there was nothing upon which the Court could make an assessment of whether "*good reason for extending the period within which the application shall be made*" existed.
13. The Court was minded to deny the application for leave to apply for judicial review. In light of the nature of the application, the Court invited Counsel to specifically address the issue of delay. A second affidavit was filed by the Applicant on 6 June 2024. In the second affidavit, the Applicant indicated that:

*"10. I have looked at the 2024 calendar on my phone and noted the following: the 7<sup>th</sup> of February 2024 was a Wednesday. I counted twenty-eight (28) days forward which takes the date to Wednesday 6<sup>th</sup> March 2024. I then counted another twenty-eight days (28) days forward and observed that the calendar reads Wednesday 3<sup>rd</sup> April 2024. I then counted another twenty-eight (28) days forward which takes the calendar to read Wednesday 1<sup>st</sup> May 2024.*

11. I observe that I filed my application on **Tuesday 30<sup>th</sup> April 2024**. I aver that my application was filed on time and was within the three-month limitation period. I respectfully disagree that there has been non-compliance with the GCR Order 53 r. 4 (1). However, I have been informed that this three-month limitation period is what is often referred to by this Honourable Court as a "long-stop".

12. I have been informed that despite having a maximum of three months to file my application for leave for judicial review, such an application must be filed without undue delay, acting swiftly in all circumstances. I have been further informed that when an application for permission to apply for leave is not made promptly and in any event within three months, the court may refuse permission, or where permission has been granted a substantive remedy if in its opinion the granting of the remedy sought would likely to cause hardship or prejudice or would be detrimental to good administration.

13. My wife passed away on 14<sup>th</sup> April 2023. I am still grieving her passing. It has been extremely challenging, just thinking about her dying in my hands, makes my heart ache so much for her. Each day is a struggle to get through, but especially on a Friday because that is the day she passed.

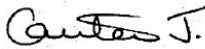
14. The process of drafting my affidavit in support of my application for leave for judicial review took time. The process took a profound toll on me, as it brought back memories of my wife and the sadness of her passing. I found it extremely difficult to provide my counsel with written instructions. Many days would pass by when all that I could do was just cry and be unable to do anything. This regrettably has delayed this application. It has also been extremely difficult to review my photographs and decide which ones to use as exhibits in support of my affidavit, as many are very personal and private, viewed only by close friends and family. I respectfully offer this explanation and humbly pray that this Honourable Court will accept this as the reason for the delay, for apparent non-compliance to GCR Order 53 r. 4 (1).

15. Lastly, I would like to say that to the best of my knowledge and belief as a result of this apparent delay no one has suffered undue hardship or been prejudiced as a result."

14. While the Court is not without sympathy for the Applicant's distress following the passing of his wife, this, in and of itself, is not good reason for the delay in filing the application for leave for judicial review so as to cause the Court to exercise its discretion under O. 53 r. 4 (1)

15. The timeous application for leave is one of the gateway provisions under Order 53. If an applicant does not comply with the provision regarding the timely filing of the application for leave, the court, in the usual course, cannot, without good reason being advanced and accepted by the court, move to consider whether the Applicant has demonstrated that he has arguable grounds for judicial review having a realistic prospect of success.
16. The application for leave is grounded on the Applicant having not been afforded the opportunity to respond to statements and matters considered by the Director before the Decision was issued. The *Immigration (Transition) Act (2022 Revision)* provides no right to appeal the Decision. It is of note that the Director contemplated that the Applicant, if dissatisfied with the Decision, would have had a right of appeal although this assumption was erroneous. This application is the Applicant's only recourse.
17. In considering whether to grant leave to apply for judicial review, the Court must determine whether the Applicant has satisfied the Court that *"there is some arguable case or claim which is not obviously untenable, vexatious or frivolous."* The Applicant, in his affidavit in support of the application, states that his marriage was intact immediately before the death of his wife. He referred to his support of his wife while she was still in hospital in Miami and stated as follows:
- "44. A week after Tricia's death I found on my wife's computer that she had contacted Mr. Solomon at WORC and told him a lot of false information about me. No one contacted me from WORC and gave me a chance to hear my side. When I did my application for the spouse of a deceased Caymanian they refused the application without talking to me."*
18. The Applicant has satisfied the Court that there is an arguable case that the Decision was unreasonable in that the Applicant was not given an opportunity to be heard. The Decision, the nature of which will affect his ability to work and remain on the Islands, was made without recourse to him and so without having taken into account matters which may have been relevant to the Director's ultimate determination. The case is not one that is obviously untenable, vexatious or frivolous.
19. The nature of the application, the finding of this Court that the case is not one which is obviously untenable, vexatious or frivolous, coupled with the reasons advanced for delay, are sufficient for this Court to find that the application for leave should be granted. The Court makes the following orders:

- (i) The application for leave to file for judicial review is granted.
- (ii) Pursuant to O. 53, r.5 (9), the Applicant is to serve copies of the Originating Motion, the affidavits in support, the Order for leave and the Form 53 application upon the Respondents within seven (7) days of the date of the Order.
- (iii) The Respondent shall have leave to apply.



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