



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

**G 77 of 2020**

**IN THE MATTER OF SECTION 23(2) OF THE IMMIGRATION (TRANSITION) ACT (2021  
REVISION)**

**IN THE MATTER OF ORDER 55 OF THE GRAND COURT RULES**

**AND IN THE MATTER OF AN APPLICATION FOR A RESIDENCY AND EMPLOYMENT  
RIGHTS CERTIFICATE PURSUANT TO SECTION 30(1) OF THE IMMIGRATION ACT (2015  
REVISION)**

**BETWEEN**

**CAROL PATRICIA FISHER-MILLS**

**Appellant**

**AND**

**IMMIGRATION APPEALS TRIBUNAL**

**Respondent**

**IN CHAMBERS AS OPEN COURT**

**Appearances:** Mr H. Philip Ebanks for the Appellant  
Ms Carolyn Forster, counsel, Attorney General's Chambers for the  
Respondent

**Before:** Hon Mr Justice Alistair Walters, Actg.

**Date of Hearing:** 23 September 2022

**Draft circulated:** 6 October 2022

**Judgment Delivered:** 17 October 2022

**HEADNOTE**

*Appeal against decision of Immigration Appeals Tribunal in relation to application by Appellant for permanent residency - whether IAT erred in law in relation to allocation of points when considering appeal against refusal - whether IAT acted unreasonably.*



## JUDGMENT

1. This is the hearing of an appeal by the Appellant against the decision of the Immigration Appeals Tribunal (“IAT” or “Respondent”) to refuse an appeal in relation to the application for the grant of permanent residence by the Appellant pursuant to ss. 30(1) and (4) of the Immigration Act (2015 Revision) (the “2015 Act”).

2. S. 30 (1) of the 2015 Act provides as follows:

*“Any person who has been, and is legally and ordinarily resident in the Islands for a period of at least eight years but not more than nine years, other than —*

*(a) the holder of a Residency Certificate for Persons of Independent Means;*

*(b) the holder of a Residency Certificate for Retirees;*

*(c) the holder of a Certificate of Direct Investment or a Direct Investment Holder’s (Dependant’s) Certificate;*

*(d) the holder of a Residency Holders (Dependant’s) Certificate;*

*(e) the holder of a Certificate of Permanent Residence for Persons of Independent Means; or*

*(f) a person who was granted permanent residence under any earlier law in circumstances analogous to paragraphs (a) or (b),*

*may apply in the prescribed form and manner to the Board or the Chief Immigration Officer for permission for himself, his spouse and his dependants, if any, to reside permanently in the Islands and such application shall be accompanied by the prescribed application fee, issue fee, dependant fee and the annual fee with respect to the first year.”*

Ss. 30 (3) and (4) provide as follows:

*“(3) For the purpose of assessing the suitability of an applicant for permanent residence, a points system shall be prescribed by the Cabinet.*

*(4) In considering an application for permanent residence under subsection (1), the Board or the Chief Immigration Officer upon applying the criteria set out in the points system shall grant permanent residence to all applicants attaining one hundred and ten points or more.”*

3. The points system is set out in Schedule 2 to the Immigration Regulations (2017 Revision) (the “Regulations”) which set out nine factors for which points are awarded:

3.1 Factor 1 - Occupation

3.2 Factor 2 – Education, Training and Experience

3.3 Factor 3 – Local Investments

3.4 Factor 4 – Financial Stability

3.5 Factor 5 – community minded/integration into the Caymanian community



- 3.6 Factor 6 - History and culture test
  - 3.7 Factor 7 – Possession close Caymanian connections
  - 3.8 Factor 8 – Demographic and cultural diversity
  - 3.9 Factor 9 – Age distribution
4. The position of the IAT is that the structure of the 2015 Act and the points system does not give the Board any discretion about how to award points. Unless 110 points are awarded, the Board cannot grant permanent residency<sup>1</sup>. This is consistent with the approach of Ramsay-Hale J in the case of *Alejandro Ruiz Ambriz v The Attorney General and The Immigration Appeals Tribunal*<sup>2</sup> also my approach in *Joey Buray and Leon D’Souza v The Immigration Appeals Tribunal and The Attorney General*<sup>3</sup>.
  5. The Appellant had submitted an application for permanent residency on 29 March 2018.
  6. On 3 October 2018, the Appellant received a decision letter and appeal statement from the Permanent Status and Residency Board (the “Board”) indicating that the Appellant had been awarded 76.5 points out of a possible 251. The minimum required was 110 and her application was therefore unsuccessful.
  7. The Appellant appealed on 7 May 2019. The appeal is governed by the Immigration Act (2015 Revision) (the “2015 Act”). The IAT carries out a two-step process when considering appeals. Firstly, it determines whether there is a ground of appeal, and secondly, if such a ground is made out, it rehears the application do novo<sup>4</sup>.
  8. In the case of the Appellant, the IAT found that there was no ground of appeal and therefore did not rehear the matter. The decision of the Board stands and the Appellant did not receive the requisite 110 points for a grand of permanent residency. The Appellant seeks to have the IAT’s decision set aside and the matter remitted for reconsideration.
  9. The grounds of appeal are that:

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<sup>1</sup> S. 30 (4) of the 2015 Act.

<sup>2</sup> Unreported 25 October 2021.

<sup>3</sup> Unreported 8 June 2022.

<sup>4</sup> S. 16 (4) of the 2015 Act.

- 9.1 the IAT erred in law in the application of points under the Regulations Factor 2 (b) in relation to education;
- 9.2 the IAT erred in law in the application of points under the Regulations Factor 4 (a) in relation to financial stability – cash and savings; and,
- 9.3 that the decision of the IAT was unreasonable, and contrary to principles of natural justice.

**Factor 2 (b)**

10. In relation to skilled/unskilled occupations the Regulations provide as follows:

*“Points will be allocated based on the applicant’s academic qualifications, technical qualifications or educational certificates, by any internationally or nationally recognised institution or official body related in the applicant’s current field of expertise or trade*

...

*(b) Education*

...

*Skilled/Unskilled Occupations: II. Technical/ Vocational*

- i. Post Graduate Degree*
- ii. Local Licence from the relevant Regulatory body*
- iii. Bachelor’s Degree*
- iv. Vocational Certificate (greater than 1 year of study)*
- v. Associate’s Degree*
- vi. Vocational Certificate (less than 1 year of study)*
- vii. High School Diploma or equivalent*
- viii. None of the above.”*

With associated point allocations as follows:

Maximum 15 - i. 15, ii. 15, iii. 12, iv. 10, v. 8, vi. 7, vii. 5, viii. 0.

11. The Appellant is a barber/cosmetologist by trade. When she made her original application to the Board she provided two documents in support. The first was a Certificate of Participation dated 25 April 2016 issued by the Cayman Islands Government for attending the Health Education Training Course for Cosmetologists, Barbers and Hairdressers conducted by the Department of Environmental Health (“DOEH”). The second was licence issued by the Kingston and St. Andrew Corporation in Jamaica to perform the duty of a barber/cosmetologist. The copy provided to the Board was stated to expire on 31 March 2002.
12. The Appellant says that the IAT failed to or failed to properly apply Factor 2. She argues that she had a licence from an internationally or nationally recognised institution or regulatory body related to her current field of expertise or trade and that, accordingly, she should have been awarded 15



points. The Appellant argues that she is obliged to attend the DOEH training and that the IAT failed to take into account fully the certificate issued by the DOEH when considering an award of points.

13. The amount of points that she had been awarded for this factor was 7. In its decision letter dated 9 March 2020 (the “Decision Letter”), the IAT states:

*“The Tribunal is of the view that seven [7] points awarded by the CS/Board to the Appellant for this factor was reasonable as the certificate that the Appellant provided was in relation to her current occupation and under one year of study.”*

14. In its submissions, the IAT argues that the IAT recognized that the licence that had been issued by the Jamaican authority had expired and that the only current document available in support of the application was the certificate issued by the DOEH. The IAT argues that the training attended by the appellant was for the purposes of assisting with the Appellant following the DOEH Guidelines for the Operation of Barber Shops and Beauty Salons in particular in relation to facility hygiene and sanitation. The IAT says that the DOEH is not regulatory body in determining the qualification skill or level of ability of barbers/cosmetologists.
15. In the circumstances and based on the information that was provided by the Appellant’s to the Board it does seem to me that both the Board and the IAT have properly considered the points to be awarded under factor 2(b) and have rightly allocated seven points to the Appellant. The licence issued by the Jamaican authority had expired a substantial period of time before the application was made for permanent residency and regardless of that, it does not appear to provide any evidence of a particular level of training or skill on the part of the Appellant. The DOEH does not appear to be a regulatory body and the certificate provided cannot in my view represent more than evidence of less than one year’s vocational training in connection with the health and safety aspects of her work.

#### **Factor 4 (a)**

16. When considering financial stability, the Regulations approach the award of points as follows:

“Financial Stability:

- a. Evidence of cash and savings held locally.  
Applicant’s total cash and deposits (up to a maximum of CI\$50,000)  
as a percentage of aggregate salary/income for the last twelve (12)  
months
  - i. 5.0% and Greater



- ii.** 4.0% to 4.99%
- iii.** 3.0% to 3.99%
- iv.** 2.0% to 2.99%
- v.** 1.0% to 1.99%
- vi.** Less than 1.0%

With associated point allocations as follows:

Maximum 15 - i. 15, ii. 12, iii. 9, iv. 6, v. 3, vi. 0.

17. In support of her application for permanent residency, the Appellant included bank statements indicating that she had a balance of CI\$1,274.58 as of 9 February 2018. Her last twelve month salary receipts totaled CI\$11,700. The Applicant says that considering the aggregate of cash and deposits as a percentage of her aggregate income (11700/1274.58) results in 10.89% of annual salary held in savings. She says that would lead to an award of 15 points.
18. The Applicant argues that even if the average of the monthly balance for the preceding year was taken as approximately CI\$293 and considered as a percentage of aggregate salary the resulting percentage is 2.5% of annual salary held in savings leading to an award of 6 points.
19. The Appellant also provided a letter from her bank. Cayman National Bank confirmed that she had maintained a balance in the “*low three figures over the past five years*”. The Appellant argues that it is reasonable to have assumed that the reference to low three figures means approximately CI\$500 which, when compared against her aggregate salary, results in a percentage of 4.27%. That would have generated an award of 12 points.
20. The Decision Letter dealt with this factor by saying:

*“The Tribunal determined that the CS/PR Board was not in breach of procedural fairness, or at variance with the Regulations, nor acted unreasonable or contrary to the principles of natural justice in awarding the Appellant zero [0] points based on the letter from Cayman National Bank dated 9 February 2018.”*

The Position of the Appellant is that not only did the IAT fail to give any reasons for its decision but that, in addition, based on the evidence before it there was no basis to uphold the award of zero points. The Appellant says that the IAT should have awarded points on one of the bases set out above with a minimum of 6 points.



21. The IAT in response says that it did give relevant consideration to the letter from Cayman National Bank and was entitled to apply what it says is the normal meaning of “*low three figure sum*” resulting in an award of zero points.
22. I do not agree that it was reasonable for the IAT to interpret a “*low three figure sum*” in such a way as to result in zero points. I think that the approach of the Appellant, looking at an average of her preceding year’s savings (a low three figure sum) compared to income is more reasonable, and I therefore award the Appellant 6 points for Factor 4 (a).
23. The IAT makes the wider point that even on the Appellant’s best case she cannot reach the threshold of 110 points. I have not interfered with the points award for vocational training but have awarded her an additional 6 points for Factor 4 (a). That leaves her with a total of 82.5. The only basis upon which the Appellant can succeed with her appeal is to argue, as she has done, that the decision of the IAT was:
  - 23.1 “*a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it*”;  
or
  - 23.2 “*beyond the range of responses open to a reasonable decision maker*”.<sup>5</sup>
24. If a decision reaches this threshold then it is contrary to the principles of natural justice and liable to be set aside and remitted to the original decision maker.
25. Mr Ebanks says that the failure of the IAT to recognize the licence from the Jamaican body, the failure to recognize that the licence granted by the Cayman Islands Government was the only licence available means that it failed to logically and reasonably conclude that the Appellant had presented all possible evidence to demonstrate that she had received the proper regulatory licence and was entitled to the award of 15 points.
26. I do not agree that the DOEH can be viewed as a regulatory or licencing body in the context of the certificate issued to the Appellant. I also do not think that it was unreasonable for the Board and the IAT to have not placed any weight on the licence issued by the Jamaican body as it was well

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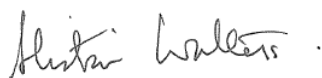
<sup>5</sup> *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223.

out of date. On that basis I do not think that the decision of the IAT was unreasonable and certainly not “*Wednesbury*” unreasonable.

27. In relation to the financial stability assessment, Mr Ebanks contends that the IAT failed to apply the Regulations properly, failed to calculate the percentages of savings held properly, failed to consider the bank statements and placed wholly disproportionate weight on the letter from Cayman National Bank. For the reason set out above, I do think that the Board IAT failed to allocate sufficient points in relation to this Factor and I have indicated that the Appellant should have been allocated 6 instead of zero.
28. However, once again, in my view that does not mean that the allocation of zero points was unreasonable to anything close to the level of “*Wednesbury*” unreasonableness and in itself does not provide any basis for the remission of this matter back to the Board.
29. Finally, Mr Ebanks has raised the question of whether the 2015 Act and the Regulations are incompatible with the Bill of Rights<sup>6</sup> and asserted that the IAT should have exercised its discretion in favour of the Appellant. In my judgement in the *Buray* case I dealt at length with this issue and found that the points system and the Regulations are not incompatible with the Bill of Rights.

## **Conclusion**

30. For the reasons given, I am of the view that the Appellant should have been awarded an additional 6 points in relation to financial stability and savings. However, this still does not mean that she has reached the necessary threshold of 110 points. I do not find that the IAT has acted in a way that is close to “*Wednesbury*” unreasonableness and see no basis to remit this matter back for re-hearing. Therefore, the appeal is dismissed.



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**Honourable Mr. Justice Alistair Walters, (Actg.)  
Judge of the Grand Court**

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<sup>6</sup> Part 1 of Schedule 2 to the Cayman Islands Constitution Order 2009.