



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. G 207 OF 2020

IN THE MATTER OF SECTION 30 (1) OF THE IMMIGRATION ACT (2014 REVISION)

AND IN THE MATTER OF THE DISMISSAL OF AN APPLICATION FOR PERMANENT RESIDENCY OF ALEJANDRO RUIZ AMBRIZ PURSUANT TO SECTION 23 (2) OF THE IMMIGRATION (TRANSITION) ACT, 2018 BY THE DECISION OF THE IMMIGRATION APPEALS TRIBUNAL MADE BY THEIR DISMISSAL LETTER DATED 16TH NOVEMBER 2020

BETWEEN: ALEJANDRO RUIZ AMBRIZ APPELLANT

AND

- 1. THE ATTORNEY GENERAL
2. THE IMMIGRATION APPEALS TRIBUNAL

RESPONDENTS

IN CHAMBERS

Appearances: Mr Alejandro Ruiz Ambriz, in person
Ms. Claire Allen, Crown Counsel for the Respondents

Before: Hon. Mrs. Justice Margaret Ramsay-Hale

Heard: 12 February and 31 March 2021

Judgment Delivered in draft: 22 October 2021

Final Judgment circulated: 25 October 2021

HEADNOTE

Statutory Appeal against decision of Immigration Appeals Tribunal - appeal on point of law only - Application for RERC under section 30(1) of the Immigration Act - Points System in Schedule 2 of the Immigration Regulations (2019 Revision) - whether section 9 of the Bill of Rights engaged

JUDGMENT

INTRODUCTION

- 1. By Notice of Originating Motion filed 21 December 2020, the Appellant, Mr. Alejandro Ruiz Ambriz ("Mr. Ruiz") appeals from the decision of the Second Respondent, the Immigration Appeals Tribunal ("IAT") dismissing his appeal against the refusal by the Chief Immigration Officer to grant his application for permanent residence.



BACKGROUND

2. By way of letter dated 20 July 2015, Mr. Ruiz applied to the Caymanian Status and Permanent Residency Board for the right to reside permanently in the Cayman Islands.
3. On 13 March 2018, the Acting Chief Immigration Officer of what was then the Department of Immigration, issued a decision letter to the Appellant under section 30 (1) of the **Immigration Act (2015 Revision)** (the "**Immigration Act**") advising that Mr. Ruiz's application for permanent residence ("PR") had been assessed against the permanent residency points system set out in Schedule 2 ("**Schedule 2**") of the **Immigration Regulations (2017 Revision)**(the "**Regulations**") and refused, for the reason that he had only attained 74 points of the 110 points.
4. Section 2 of the **Immigration Act** provides the following definition:

"points system' means the guidelines set out in Schedule 2 to the Regulations whereby the Caymanian Status and Permanent Residency Board or the Chief Immigration Officer shall evaluate the merits of an application for permanent residence by awarding to, or discounting from the applicant, credits based on his personal and occupational attributes as well as his potential value to the community."

5. Schedule 2 sets out 9 factors which the Chief Immigration Officer is required to consider and the points allowed for each.
6. The first factor is **Occupation**. The schedule provides for a maximum of 15 points to be awarded in respect of **Factor 1a** which is the applicant's current occupation. The Schedule also provides for an additional maximum 15 points for **Factor 1b** if the applicant is employed in a priority occupation. The preamble to the Schedule provides that the Cabinet, in its discretion, may publish a list of occupations specified as priority occupations and that where such a list is published the Board or the Chief Immigration Officer, as the case may be, in considering an application for permanent residence under. No such list has yet been published by Cabinet.
7. The second factor is **Education, Training and Experience**. A maximum of 25 points may be awarded. Up to 10 points are available for the applicant's years of experience, 15 for his education. If the applicant is in a skilled or unskilled profession ¹ points are allocated based on the applicant's academic qualifications, technical qualifications or educational certificates, by any internationally or nationally recognized institution or official body related in the applicant's current field of expertise or trade.

¹ Provision is also made for professional occupations
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8. The third factor is **Local Investments** with 30 points available. The explanatory note provides, *inter alia*, that total investment requires a minimum of CI\$50,000. No points will be awarded for investments of less than this amount but where the investment exceeds CI\$50,000, points will be awarded for the full value, i.e. including the first CI\$50,000.
9. The fourth factor is **Financial Stability** for which a maximum of 30 points are available. The Applicant may be awarded up to 15 points for cash and savings held locally as a percentage of aggregate of salary/income, and a further 15 for the applicant's salary, the points being awarded on a sliding scale, with 15 points for incomes over \$150,000 p.a. and zero points for salaries under \$15,000 p.a.
10. Factor 5 is **Community Minded/Integration into the Caymanian Community**. Up to 20 points are available to applicants who can demonstrate their engagement in Cayman's community life whether by training and mentoring Caymanians or participating in various activities including youth programmes, sports programmes or service clubs or volunteering for non-profit, charitable or voluntary organisations among others.
11. Factor 6 is the **History and Culture Test** which seeks to measure the applicant's integration into the Caymanian society by reference to his knowledge of local history, tradition, customs and current events. A maximum of 20 points are available.
12. Factor 7 is **Possessing Close Caymanian Connections**. A maximum of 100 points is available based on the applicant's relationship to a person who is Caymanian.
13. Factor 8 is **Demographic and Cultural Diversity**, a factor which seeks to maintain a demographic and cultural balance in the Cayman community. Points are awarded based on the applicant's country of origin, with persons from countries with fewer work permits holders receiving higher points than applicants from a country with higher degrees of representation. A maximum of 10 points are available for this factor.
14. Factor 9 is **Age Distribution** with a maximum of 10 points.
15. As no priority occupations have yet been identified by Cabinet, the Chief Immigration Officer may award up to a maximum of 265 points. A minimum of 110 points are required for a grant of permanent residency.
16. On 9 April 2018, Mr. Ruiz appealed to the IAT against that decision. On 10 September 2018, he lodged detailed grounds of appeal under section 21(8) of the **Immigration Transition Act** challenging the decision of the Chief Immigration Officer (Ag.) on all the available statutory grounds, alleging that the decision was "*unreasonable, contrary to the principles of natural justice, erroneous and at variance with the Regulations*".



17. The appeal process involves a two-step process by the IAT which is required first to determine whether any grounds of appeal are made out. If the appellant succeeds on one ground, the IAT proceeds to determine the appeal by way of rehearing.² The IAT determined that the Chief Immigration Officer (Ag) had erred as he failed to take Mr. Ruiz's Forklift/Man-lift vocational certificate dated 9 April 2015 into consideration in determining the points to be awarded under Factor 2b of Schedule 2 of the Regulations which awards points for education. Consequently, on 24 February 2020, the IAT wrote to the Appellant to advise that a ground of appeal had been established and that the appeal would be deferred. In accordance with sections 21(10)³ and 22(5)⁴ of the **Immigration (Transition) Act, 2018** (the "**Immigration Transition Act**"),⁵ which provides for the rehearing to be a hearing *de novo*, the IAT invited Mr. Ruiz to submit details of any change in his circumstances.
18. On 18 June 2020, the IAT, being minded that COVID 19 might have impacted his circumstances, wrote again to Mr. Ruiz requesting that he provide evidence of any change in his personal, professional or financial circumstances with respect to a list of matters. The IAT made clear that list was not exhaustive and urged Mr. Ruiz to supply any and all updated information to qualify for points in accordance with the Regulations. The information was to be provided within 28 days.
19. On 31 July 2020, Mr. Ruiz responded to the request enclosing the following documents for the IAT's consideration in relation to the listed matters:
 - a. **Employment:** an updated employment letter from IE Caribbean Ltd;
 - b. **Bank Savings:** an updated bank reference letter from Bank of Butterfield;
 - c. **Proof of contribution to the community:** a reference letter dated 1 May 2019 and contribution /completion certificates from Cayman Islands Red Cross;
 - d. **Pension Savings:** a pension savings statement from Chamber Pension Plan;
 - e. **Evidence of investment in a local company:** Company Incorporation Certificate, Register of Members and Register of Directors and Officers certificates;
 - f. **Evidence of further educational qualifications or training:** an educational training completion certificate from PermaTone; and
 - g. **General:** a reference letter from a Caymanian mentee, Mr. Astor Ruiz Madrid.

² Section 22(4) provides "*Where at a hearing on grounds the IAT ...determines that at least one of the grounds contained in section 21(8) has been made out, the IAT ...shall proceed to a rehearing of the original application which was subject of the appeal.*"

³ Section 21(10) provides "*In considering the detailed grounds submitted by the appellant under subsection (6), the Immigration Appeals Tribunal or the pertinent Board may request additional information or further particulars from the appellant.*"

⁴ Section 22(5) provides "*The Immigration Appeals Tribunal or the pertinent Board when rehearing an application under subsection (4) shall do so by way of a hearing de novo and shall take into account any fresh evidence put forward by the appellant or the Director of WORC or the Board that may have arisen in relation to the parties, which is to be submitted in writing.*"



The Decision

20. On 16 November 2020, the IAT issued a “Decision Letter” advising Mr. Ruiz that his application for permanent residence was unsuccessful. In its reasons for the decision, the IAT stated, *inter alia* that,

“The Tribunal carefully considered the change of circumstances documents that were received on 1st July and 3rd August 2020.”

“The Tribunal proceeded to a hearing de novo and records that the appellant accumulated eighty seven point five [87.5] points under the criteria set out in the points system contained in Schedule 2 of the Immigration Regulations (2019).”

21. There followed an explanation of how those points were arrived at. Relevant to issues raised in this appeal, the IAT allocated zero points to Mr. Ruiz for **Factor 3 Local Investment** for the reason that it had asked Mr. Ruiz to provide “*all information in respect to all factors outlined in [its] letter.*” The Decision Letter notes that Mr. Ruiz provided the Register of Members for a construction company which showed he held 40% of the shares but the information provided did not address the level of his investment where the Schedule requires an applicant to demonstrate that he had invested CI\$50,000 in that company. The IAT awarded 1.5 points for **Factor 5 Community Involvement** for his volunteerism based on the letter submitted by the Red Cross which stated that Mr. Ruiz had completed a minimum of 50 hours of voluntary service since April 2018.
22. The IAT also stated that,

“The Tribunal further considered the Appellant’s submission under section 9 of the Bill of Rights... There is no indication before the Tribunal that the Appellant has established a family unit within the Cayman Islands as considered in the Grand Court decision in Ian Fernando Ellington v Chief Immigration Officer dated 29 April 2020. There is no evidence that the Appellant has established, or is a member of, a family unit in the Cayman Islands. Therefore the Tribunal determined having reviewed all the correspondence before it from the Appellant, and WORC, that section 9 Bill of Rights could not be invoked by the Tribunal in full consideration of this appeal.”

23. The Decision Letter concluded that,

“In accordance with Schedule 2 of the Immigration Regulations (2019 Revision) the minimum points to be achieved by an applicant in order to receive a grant of permanent residence is 110 points. The Appellant has not achieved sufficient



points to qualify for the grant of permanent residency. The Tribunal could not invoke the Appellant's claim under section 9 of the Bill of Rights in the Cayman Islands Constitution Order 2009 as the Appellant had not established a family unit in the Cayman Islands.

Accordingly, the appeal is dismissed and permanent residency not granted to the Appellant."

Procedural matters

24. The appeal is to the Grand Court under section 23(2) of the **Immigration Transition Act** which provides that such appeals are on points of law only. The procedure is set out in the **Grand Court Rules** O.55 r.1. With respect to the service of notice of motion and entry of appeal, O.55, r.4 provides that:

"4. (1) The persons to be served with notice of the motion by which an appeal against an order, determination, award or other decision of ...any tribunal or person is brought, are the Secretary to Executive Council, the Registrar of Lands, the chairman of the tribunal or person, as the case may be, and every party to the proceedings in which the decision was given who is directly affected by the appeal.

(2) 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.

(3) The period specified in paragraph (2) shall be calculated from the date on which notice of the order, decision, determination or award was given to the appellant by the person or persons who made it or by a person authorised in that behalf to do so."

25. The appeal was filed on 20 December 2020 by Mr. Ruiz acting in person. He provided, as his address for service, the address of the agency which had prepared and submitted his application for permanent residence, prepared and submitted his appeal to the IAT, later submitted the documentation requested by the IAT for the purposes of that appeal and which, I infer, prepared and filed his appeal to the Grand Court. The insufficiency of the pleaded case prompted Mr. Clyde Allen, attorney-at-law, who came on record for Mr. Ruiz at the first hearing on 2 February 2021, to seek leave to file an Amended Notice of Originating Motion. The application was granted and the amended Motion (which amended by substitution) was filed on 19 March 2021, by which date Mr. Ruiz was again acting in person.



26. In making his application for an extension of time within which to appeal, Mr. Ruiz states that he signed the Notice of Originating Motion and supporting affidavit on 12 December 2020 and was unable to explain why the documents were not filed until the 20 December 2020 and not served until 5 January 2021, except to say that the agency which assisted him had not served him well.
27. I accept Mr. Ruiz's explanation that the delay in filing and serving the appeal was the fault of the agency on which he relied. In extending time, I also take into account the fact that the delay was not substantial and that it is in the public interest for the Court to consider the points raised in the appeal.

The Grounds of Appeal

28. The grounds of appeal as I understand them are as follows:
- (i) That the IAT erred in law in refusing to take into account Mr. Ruiz's section 9 rights under the **Bill of Rights, Freedoms and Responsibilities** (the "BoR") on the ground that Mr. Ruiz had not established a family here;
 - (ii) That the points-based system and/or the setting of a specific minimum number of points required to qualify for permanent residence is inconsistent with the provision of the BoR in any event;
 - (iii) That the IAT erred as a matter in law in failing to consider and/or to correctly award points for factor 1, 3 and 5 of Schedule 2;
 - (iv) That the IAT erred in failing to exercise its discretion to obtain further clarification from the Appellant or asking him to attend in person him to make representations or clarify matters or make supplementary submissions on the strength of his application and reached its decision in breach of the rules of natural justice and/or in a manner which was unfair to the Appellant;
 - (v) That the IAT failed to take account of the delay since 2015 and to consider Mr. Ruiz's reasonable expectations as to the continuity of his life and lifestyle in the Cayman islands and the prejudice caused to him by its decision; and
 - (vi) That the IAT acted unreasonably or in bad faith as no reasonable or fair Tribunal would have come to the same decision in the circumstances having regard to all the facts and circumstances of the application.



Discussion and Decision

Breach of the Applicant's Constitutional Rights

29. In respect of the first ground, Mr. Ruiz asserts, in the pleaded case, that the IAT had misconstrued the decision in *Ellington v Chief Immigration Officer of the Cayman Islands (Williams J, Grand Court)* as limiting the application of the section 9 right to a 'private and family life' to applicants who have a family unit or children in the Islands. The submission is that the right is to a "**private and family life**," not merely to "family life" and that the narrow interpretation placed on section 9 by the IAT wrongfully excludes persons who have not established a family in the Islands but who have, over the course of their long-term residence in the Islands, established relationships at work, have connections to local families and to the community - in essence, set down roots - as Mr. Ruiz had done since 2006. Complaint is also made that the IAT did not ask Mr. Ruiz to provide details of his living arrangements or ask about his relationship status or seek details of any other matter which might be relevant to his section 9 rights. Mr. Ruiz characterises the IAT's summary dismissal of any consideration of his section 9 rights as "*self-serving*."
30. Ms. Allen, on behalf of the IAT, submits that the IAT's reference to the BoR as being relevant to their consideration was mistaken, as the decision maker under the statutory scheme exercises no discretion. Rather, the decision-maker is required to scrutinize the evidence provided by the applicant, assign the requisite number of points and grant the application if the applicant achieves 110 points. The decision maker cannot apply different weights to any of the factors or consider any extraneous factors such as an applicant's right to have his private and family life be respected.
31. A case is authority for what it decides. As Crown Counsel submits, the case of *Ellington* is readily distinguishable from the case at Bar. *Ellington* was concerned with the entitlement of an applicant to a Residence and Employment Rights Certificate as a spouse of a Caymanian. The Court determined that section 9 was engaged and held, that when there was an application "*for residency rights under an RERC, if their spouse is a Caymanian settled in the Cayman Islands, consideration must be given to both spouses' rights under section 9 of the BOR.*"
32. The decision in *Ellington* addressed the question of how the IAT should exercise its discretion to grant or refuse an application under section 31 **Immigration Law**. That section requires the IAT to take the following matters into account:
- (a) the spouse of the applicant is Caymanian;
 - (b) the marriage is not a marriage of convenience;
 - (c) the applicant is of good character;
 - (d) the applicant is in good health as evidenced by a recent medical certificate;
 - (e) the marriage is stable; and

(f) the applicant and his spouse have sufficient financial means to support himself and his dependents listed on the application as accompanying him.⁶

33. The learned Judge held that the list of matters to be taken into account by the IAT was not exhaustive and that, when determining what weight to give to the applicant's bad character and whether to exclude the applicant from the community on that ground, the IAT must consider the section 9 rights of the applicant and his spouse to a family life. He recognised the competing rights in play, saying this at para 76:

"When conducting the balancing exercise, consideration should not only be given to the rights of the individual but also to the right of the community, which includes the right to be protected from persons whose actions may impinge on public safety."

34. The learned Judge found that the IAT had failed to take Mr. Ellington's section 9 rights into account and allowed the appeal, remitting the matter to the IAT for that balancing exercise to be conducted.

35. There was no warrant for the IAT to extend the decision in *Ellington* to a consideration of an application for permanent residence under section 30. Those applications are governed by an entirely different statutory framework which does not allow for the exercise of discretion by the decision maker. Section 37 (3) of the **Immigration (Transition) Law, 2018** states:

"(3) In considering an application for permanent residence under subsection (1), the Board or the Director of WORC, upon applying the criteria set out in the points system, shall only grant permanent residence to all applicants attaining one hundred and ten points or more."

36. Section 9 is simply not engaged. There is no discretion to give lesser or greater weight to any particular factor or to consider any matter which are not set out in Schedule 2. The decision maker must apply the criteria set out in the points system and grant permanent residence if the applicant has 110 points. A failure by any to apply the law is contrary to section 19(1) of the BoR which provides that,

"19.—(1) All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair."

37. I accept the criticism made of the narrow construction of the right to respect for private and family life adopted by the IAT as being concerned only with children or the family unit. The right encompasses various aspects of an individual's life and includes the right to establish and develop

⁶ Section 31(3) of the **Immigration Act 2015**
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relationships with other persons and broader society, including relationships of a professional and business nature. But whether the IAT erred misread or misapplied *Ellington* is not relevant to this appeal, as it was not open to the IAT to take any matter into account except the criteria in the points system. To put it another way, even had the IAT decided that dismissing the appeal would breach Mr. Ruiz's section 9 rights, it could not have granted him permanent residence unless he had the requisite 110 points as it is bound by the statute.

38. The broader challenge made by Mr. Ruiz to the unconstitutionality of the points system, as being incompatible with section 9 of the BoR, is outside the scope of this appeal. I would note here, for completion only and without comment on an issue which is not before me for resolution, Ms. Allen's submission that the points system is compatible with the BoR, having been designed to take account of an applicant's private and family life, allowing points, *inter alia*, for their familial ties to Caymanians, the extent of their civic engagement and integration in the community and the business relationships they have developed.
39. The only relevant question for this Court is whether the IAT misapplied the points system in arriving at its decision that Mr. Ruiz did not have the requisite points for a grant of permanent residence.

Application of the Points System

40. With respect to **Factor 1 Occupation**, Mr. Ruiz submits that the wording of Schedule 2 and the notes thereto, by referring to "*current occupation*" and "*to each occupation under this Factor*" implicitly allows for additional points to a maximum of 30 points. He contends that the IAT could and should have awarded him a further 15 points for his involvement as the treasurer and company secretary of ARA Construction Ltd which was in place since 3 March 2020.
41. This is an extraordinary suggestion: 'involvement' is not employment and those are roles he plays within his own company.⁷ The Schedule makes it clear that points are awarded under **Factor 1 a** for the applicant's current occupation and that all applicants are awarded the full 15 points, irrespective of what that occupation is. The additional 15 points in the Schedule for **Factor 1 Occupation** are to be allocated for **Factor 1b Priority Occupation** which is not in play as the Cabinet has not specified any priority occupations to date.⁸
42. With respect to the assessment of points under **Factor 3 Local Investment** for which no points were awarded to Mr. Ruiz, Mr. Ruiz contends that he should have been awarded up to 30 points for his investment in his company, ARA Construction Ltd. He submits that the IAT acknowledged his shareholding but failed to have regard to the fact that those shares were purchased for value

⁷ Mr. Ruiz is a 40% shareholder in the company

⁸ The preamble to the Schedule states "*The Cabinet, in its discretion may publish a list of occupations specified as priority occupations*"



and/or failed to ask him to specifically prove his investment in the Company. He now asserts that he “invested more than \$15,000 for the start-up capital of the company.”

43. The explanatory note to the Schedule 2 issues the following guidance;

“In assessing an applicant’s local investments under (I) or (II) below, points shall be awarded taking into account the amount of the applicant’s monetary investment relative to his actual means.

“I. Investment in property and/or

“II. Investment in a locally licensed company

“Explanation

“Total investment (numerator) relative to total income earned over the last five years immediately preceding the application (denominator).

“Notes:

- Total investment **requires a minimum of \$50,000. No points will be awarded for investments of less than this amount.** But where the investment exceeds \$50,000, points will be awarded for the full value i.e. including the first \$50,000.*
- Maximum points will be awarded automatically where the total investment exceeds \$500,000.” [emphasis added]*

44. Ms Allen submits that the IAT did not err in not awarding any points to Mr. Ruiz in respect of his investment in ARA Construction Ltd., in the circumstances where Mr. Ruiz had provided no evidence to show he had made any investment but only provided evidence to show that he held 40% of the shares in the company.

45. I agree. I say further that Mr. Ruiz’s complaint that the IAT did not ask him to “specifically to prove his investment” seeks to fix the IAT with a responsibility which it does not have. He was invited twice by the IAT to provide updated information. In its letter of 18 June 2020 the IAT urged Mr. Ruiz to supply any and all updated information to qualify for points in accordance with the Regulations. Any failure to provide the requisite information lays squarely at the feet of Mr. Ruiz and those who were “advising” him on what the law requires. There is nothing in this ground which serves only as a salutary reminder to applicants to obtain advice on the law from those competent to give it.



46. Mr. Ruiz's evidence that he invested more than \$15,000 in his company is inadmissible as appeals to the Grand Court are, as I have already observed, on a point of law only. Even if the evidence were admissible, or had been put before the IAT at the relevant time, it could not avail Mr. Ruiz, given that the threshold for the award of points is an investment of \$50,000.
47. With regard to **Factor 5 Community Involvement**, Mr. Ruiz contends that the IAT in awarding him only 1½ points for this factor, "*failed to note or heed or give sufficient credit*" to his long-standing involvement with the Red Cross. In support of application for points under this factor, Mr. Ruiz submitted a letter from the Red Cross dated 1 May 2019 which stated that Mr. Ruiz had joined the organization as a volunteer in April 2018, had completed a minimum of 50 hours of voluntary service and made an outstanding contribution to the organization. Mr. Ruiz also contends that the IAT erred in failing to award him any points for mentoring a young Caymanian, evidence of which had been provided to the IAT in Mr. Ruiz's July 2020 submission in the form of a letter written by the beneficiary of this mentoring
48. The explanatory notes for **Factor 5** state that one and one half (1.5) points will be awarded for each year that the applicant has provided a *minimum* of 35 hours of service annually for up to 8 years for volunteering for non-profit, charitable or voluntary organization. Mr. Ruiz has failed to demonstrate that the IAT fell into error as it awarded the correct number of points for his volunteer work with the Red Cross.
49. The notes also provide that two (2) points will be awarded for each year that the applicant has provided a minimum of 35 hours of service annually for up to eight years for training and mentoring of Caymanians outside of normal work hours or related employer sponsored activities. Mr. Ruiz contends that points ought to have been awarded to him under this category but, as Ms Allen points out, the letter of the putative mentee which was submitted by Mr. Ruiz does not specifically reference a time period over which this mentoring took place, state whether the writer whose name was Astor Ruiz Madrid was in fact a Caymanian or whether he even considered Mr. Ruiz's assistance to be "mentoring."
50. Not only is this ground hopeless, it is also moot as even if it had succeeded, which it could not, the 2 points which might have been awarded would not push the count from 87.5 to the 110 points Mr. Ruiz required to be granted permanent residence.

Breach of Natural Justice

51. Mr. Ruiz complains that the IAT did not invite him to be present and make representations at the hearing of the appeal. Ms Allen points out that the IAT had no power to permit Mr. Ruiz to be present as the **Immigration Transition Act** provides at section 22(7) that:



“Neither the appellant nor the representative of the appellant shall be permitted to be present at the rehearing of the original application which shall be based on written submissions with respect to fresh evidence or changes in circumstances.”

52. Mr. Ruiz’s complaint seeks to invoke the *audi alterem partem* rule. As the IAT is bound by the statute, it cannot be said that it erred in law in not affording Mr. Ruiz an opportunity to make representations in person as the rule is excluded by the statute. Neither the IAT nor the Court can ignore the mandate of the legislature. The statutory exclusion does not tend, in any event, to unfairness. The process of determining eligibility for permanent residence is wholly administrative with the IAT being required to apply a points system which is clearly defined and to apply it on the basis of the appellant’s current circumstances.
53. Though excluded from the hearing of his appeal, Mr. Ruiz was invited to, and did, make written representations to the IAT and the reasons provided by the IAT make it clear that those representations were taken into account. This ground of appeal is also dismissed.

Failure to take account of the delay

54. The allegation that the IAT failed to take into account the impact of the delay in considering Mr. Ruiz’s application is disingenuous in the circumstances where the IAT invited him to provide them with updated information so they could take into account of any change in circumstances. The allegation that the IAT did not consider his reasonable expectation to remain in the Islands does not raise a ground of appeal for consideration by the Court as the IAT can only take account of the criteria set out in the Schedule.

Conclusion

55. I am satisfied and find that the IAT did not make any error of law when determining that the Applicant had not achieved sufficient points to qualify for the grant of permanent residence under Schedule 2 of the Regulations and dismiss the appeal accordingly.
56. There is no Order for costs.

DATED THE 25th OCTOBER 2021

Hon Mrs. Justice Ramsay-Hale
Judge of the Grand Court