IN THE GRAND COURT OF THE CAYMAN ISLANDS **CAUSE NO:140 OF 2021**

IN THE MATTER OF SECTION 51 (1) (C) OF THE IMMIGRATION (TRANSITION) ACT, 2018

IN THE MATTER OF ORDER 55 OF THE GRAND COURT RULES

AND IN THE MATTER OF THE REVOCATION OF THE RESIDENCY AND EMPLOYMENT RIGHTS CERTIFICATE HELD BY ALAN LAWREMS TAYLOR DOMINGUEZ GRANTED PURSUANT TO SECTION 31 IMMIGRATION ACT, 2013.

ALAN LAWREMS TAYLOR DOMINGUEZ

Appellant

-v-

IMMIGRATION APPEALS TRIBUNAL

Respondent

July 2, 2021

NOTICE OF
ORIGINATING MOTION

DIRECTIONS HEARING

TAKE NOTICE that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on the 10th day of AUGUST 2021 at 10:00 a.m./p.m. or as soon thereafter as counsel can be heard, by counsel on behalf of Alan Lawrems Taylor Dominguez ("the Appellant") for an order in the following terms:

i. The decision of the Respondent dated 7 June 2021 (but received on 8 June 2021) to refuse to reinstate the Appellant's Permanent Residence ("PR")/ Residency and Employment Rights Certificate ("RERC") revoked by the Caymanian Status and Permanent Residency Board ("the Board") on 24 October 2019 is wrong in Law / not in accordance with the law, and that matter should be remitted to the Respondent to be reconsidered and decided according to the Law; OR

ii. The decision of the Respondent dated 7 June 2021, is unreasonable, irrational and / or procedurally unfair and the matter should be remitted to the Respondent to be reconsidered and decided according to the Law.

And for an order that the costs of and incidental to this Application be paid by the Respondent.

This Motion was filed by HSM Chambers, Attorneys at Law for and behalf of the Appellant herein whose address for service and correspondence is 68 Fort Street, George Town, PO BOX 31726, Grand Cayman KY1-1207, Cayman Islands

AND FURTHER TAKE NOTICE that the grounds of this Application are:

1. The Appellant has been a Resident of the Cayman Islands since 2008 when he came to the Cayman Islands and obtained a work permit.

2. On 15 November 2013, the Appellant married Neydis Mateo Taveras (a Caymanian) and subsequently applied for and was granted an RERC as the Spouse of a Caymanian.

3. Both the Appellant and his wife had previously been married (and divorced) before they got married in November 2013. Neydis Mateo Traveras has two children from a previous relationship. Neydis was the primary carer for both children from a previous relationship and both children are studying in the Cayman Islands.

4. On 29 June 2016, Neydis gave birth to a son. The Appellant is the father of that child. That child is Caymanian and is attending school in the Cayman Islands. Since the Appellant's RERC was revoked the Appellant has been the primary carer for his child.

5. In 2017, the Appellant entered into a conspiracy to illicitly import Cocaine into the Cayman Islands.

6. On 12 May 2017, two couriers brought Cocaine into the Cayman Islands as part of the conspiracy. From this initial importation the Appellant was paid $2,000.

7. On 31 May 2017, two further couriers entered the Cayman Islands and illicitly imported 1.8kg of Cocaine.

8. On 2 June 2017, all the parties to the conspiracy (and at least one innocent third party) were arrested in the Cayman Islands save for the Appellant who was in the Bahamas at this time.

9. On hearing of the arrests the Appellant gave himself up to the authorities in the Bahamas and returned to the Cayman Islands where he was arrested. Upon interview by the Royal Cayman Islands Police, the Appellant admitted to being involved in the conspiracy.

This Motion was filed by HSM Chambers, Attorneys at Law for and behalf of the Appellant herein whose address for service and correspondence is 68 Fort Street, George Town, PO BOX 31726, Grand Cayman KY1-1207, Cayman Islands

10. After initially pleading not guilty, upon the change of representation, the Appellant pleaded guilty and offered to give evidence against his co-defendants. In the end, the Appellant gave evidence against one Co-Defendant, a customs officer. To reflect the assistance the Appellant gave to Prosecution, the Appellant's sentenced was reduced by almost two-thirds and on 27 March 2019 he was sentenced to four years imprisonment.

11. The Grand Court of the Cayman Islands did not recommend the Appellant be deported from the Cayman Islands at the end of his sentence and neither did the Prosecution seek the Appellant be deported.

12. On 24 July 2019, but received by the Appellant on 19 August 2019, the Board notified the Appellant they were minded to revoke his RERC. The Appellant responded to this on 29 August 2019.

13. On 17 October 2019, the Appellant was released from custody and into the community.

14. On 24 October 2019, the Appellant's RERC was revoked. Since this time the Appellant has been granted permission to remain in the Cayman Islands as a visitor. The Appellant's visitor's status granted to him by the Department of Immigration, now the Department of WORC, is unlawful as the Appellant is a prohibited Immigrant.

15. The Appellant appealed against the decision to revoke his RERC on 14 November 2019.

16. On or around 20 July 2020, the Board provided to the Appellant a justification for their decision.

17. Grounds of Appeal were submitted against the decision of Board on 17 August 2020.

18. In a decision dated 21 December 2020, the Respondent deferred the appeal and requested further information from the Appellant. This information was provided in the form of an affidavit dated 18 January 2021.

19. In a decision dated 7 June 2021, the Respondent concluded that the Board's decision was unreasonable as it did not give consideration of the Appellant's Right to a family life. However, the Respondent concluded that due to the nature and seriousness of the offence weighing heavily and as such it was agreed that they would not reinstate the Appellant's RERC.

Error of Law

20. It is the Appellant's position that the Respondent has erred in law in the following manner:

i. The Respondent acted Ultra Vires in refusing to return the Appellant's RERC to him after they concluded the Board erred in Law.

ii. In the event that the Tribunal do have the power to reconsider the original decision or consider the original application it is averred that as the Respondent failed to consider Section 38 (9) of the 2021 Act and apply the test of exceptionality circumstances in their decision making process they have erred in law.

iii. The Respondent misdirected themselves in law. The case of *Amrollahi v Denmark* [2002] ECHR 580 and the eight factors set out therein is not the complete test for considering whether or not a decision amounts to a Brach of Section 9 of the BOR. In particular the Tribunal failed to consider the "best interests" of the Appellant's Caymanian child.

Unreasonable

21. It is respectfully contended that the decision of the Tribunal is unreasonable on the basis that the Respondent:

i. Failed to consider the best interests of the Appellant's Caymanian child.

ii. Failed to consider the fact that the offence took place after the Appellant had established a private and family life in the Cayman Islands.

iii. Failed to consider the danger that the Appellant would be in Colombia if he was to return.

iv. Failed to consider or place sufficient weight on the fact that the Appellant had given evidence against his co-defendant.

v. Failed to consider his lack of reoffending and lack of prospects of reoffending in the Cayman Islands.

vi. The limited impact his offending had on the Cayman Islands.

22. Furthermore, the absence of policies, directives or rules in regards to the revocation of individuals RERCS means that the decision of the Tribunal is arbitrary and prone to opacity and therefore unreasonable and irrational.

Ultra vires

23. The Respondent is a body created by statue and therefore only have the powers afforded to them by the Immigration (Transition) Act (2021 Revision) and it's preceding and successor legislation.

24. Section 22 (4) Immigration (Transition) Act (2021 Revision) states:

> *(4) Where at a hearing on grounds the Immigration Appeals Tribunal or the pertinent Board determines that at least one of the grounds contained in section 21(8) has been made out, the Immigration Appeals Tribunal or the pertinent Board shall proceed to a rehearing of the original application which was the subject of the appeal.*

25. It is respectfully contended at that as the Board revoked the Appellant's RERC, there was no "original application" to reconsider. The Appellant's RERC application which was granted in 2014 was neither part of the Appeal nor was it the decision under appeal. The decision under appeal was the decision to revoke the Appellant's RERC. As the Respondent had concluded that the Board erred in Law and as their was no "original application" which had been rejcted, the Appellant's RERC should have been returned to him and the appeal granted.

26. If the Board had wished to make their decision again that would have been a matter for them. However, the Respondent does not have power to remake the decision as there was no "original application" which was subject to the appeal. Therefore by going on to remake the decision of the Board, the Respondent acted *ultra vires* and as such acted unlawfully.

Original Application

27. In the event that the Respondent had to reconsider the original application or were required to reconsider the original decision of the Board, it is averred that the Board should have taken into account Section 38 (9) of the 2021 Act. It is respectfully averred that the fact that an individual has been convicted of an offence and has served a custodial sentence cannot in itself constitute "exceptional circumstances". This fact is especially true considering the fact that the Respondent rejected a very similar appeal on or about the same day as they did the current matter.

28. In the current matter, the general rule is that the spouse of a Caymanian will be granted an RERC unless there are very compelling reasons not to do so. In the current matter is it is averred that the Appellant's conviction cannot be regarded as a very compelling not to grant the application.

29. By failing to recognise that the conviction did not amount to very compelling reasons the Respondent should have reinstated the Appellant's RERC. By failing to do so, the Respondent erred in Law and as such the decision should be remitted back to the Respondent for a reconsideration taking into account the Section 38 (9) of the 2021 Act.

Amrollahi v Denmark [2002] ECHR 580

30. In the case of Amrollahi, the Court quoted with approval the dicta in Boultif (2001) 33 E.H.R.R. 50. In the later case of *Uner v Netherland* (2007) 45 E.H.R.R. 14 the Grand Chamber of the European Court of Human Rights confirmed that there were two additional criteria, which may have been implicit in the *Boultif* Judgment but were not explicit. Those two criteria were:

- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
- the solidity of social, cultural and family ties with the host country and with the country of destination.

31. Neither of these criteria were set out in the 8 criteria in Amrollahi nor were they seemingly considered by the Respondent. In the current matter, as the Tribunal have failed to consider all of the relevant factors in particular the Respondent have failed to consider the best interests of the Appellant's Caymanian child.

32. Due to this error of Law, the matter should be remitted to the Respondent so that they can consider matters in an appropriate manner.

Unreasonable decision

33. Not only is there a requirement under Section 9 of the BOR (Article 8 of the European Convention on Human Rights) to consider the best interests of the child but there is also a requirement as per Article 3 of the United Nations Convention on the Rights of the Child ("the Child Convention"). Article 3 of the Child Convention states:

> 1. *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

34. The Cayman Islands have been a signature of the Child Convention since 1994 and it is averred that in the absence of clear legislative intent to not honour the Child Convention, the decision of the Respondent and their failure to consider the best interests of the Caymanian children in the current matter means that the decision of the Respondent is unreasonable when viewed through the prism of anxious / heightened scrunity.

35. Further and in the alternative, it is averred that the Respondent failed to place sufficient weight on various factors as set out in the *Boultif* and also failed to take into account the actual consequences of the Appellant's offending.

36. In particular the decision letter wholly fails to take into account:

i. The Appellant's limited success in importing cocaine into the Cayman Islands.

ii. The lack of any evidence which suggests that his offending had a direct effect on people becoming addicted to Cocaine, committing crimes associated with drugs use, begging or contributing to the breakdown in society.

iii. The fact that the Appellant had not only expressed remorse for his actions but his evidence also led to the conviction of a Customs Agent who had previously been found not guilty in 2010 of importing Cocaine into the Cayman Islands.

iv. The break up of the Appellant's family life with his Caymanian family.

v. The danger that the Appellant faces if he was to return to Colombia.

37. While it is accepted that on page 3 of the decision the Tribunal have listed the various considerations in *Boultif* it is clear that the Tribunal have then failed to consider those factors against the nature and the seriousness of the offence. By failing to consider the relevant factors and place sufficient weight upon them the Tribunal's decision cannot be seen as a proportionate / reasonably justifiable interference with the Appellant's family life.

Lack of polices

38. It is respectfully averred that the lack policies provided by the Board and the Director of WORC mean the decision of the Respondent is unreasonable. All decisions and acts of Public Officials must be lawful, rational, proportionate and procedurally fair. In the absence of any policies it is averred that the decision of the Respondent cannot be rational and it cannot be said to be consistent or inconsistent with previous decisions.

39. By the very fact that it is believe that there are no policies in regards to the revocation of RERCS issued by the Board or the Director of WORC (or her predecessors) it is averred that the Respondent should have directed the Board or the Director of WORC to issue policies or guidance before reaching their decision. By failing to do this, it is averred that the Respondent acted unreasonable and that their decision cannot be regarded as fair or rational.

40. In the event that the decision of the Respondent is consistent with previous decisions, i.e. the Respondent have a undisclosed policy, for example that all convicted criminals who have been

sentenced to more than 1 year in custody will lose their RERC, then the decision of the Respondent is unreasonable and procedurally unfair on the basis that this policy has never been disclosed.

Conclusion

41. Further to the above, it is averred that the Respondent acted erroneously, unlawfully, irrationally, unreasonably and in breach of natural justice. Accordingly, the decision of the Respondent should be set aside so that the Applicant's application can be reheard in accordance with law.

Dated: 2 July 2021

HSM Chambers

HSM CHAMBERS

TO: The Clerk of the Court

AND TO: The Chairman
Immigration Appeals Tribunal
Government Administration Building
Elgin Ave,
George Town
Grand Cayman