

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO:198OF 2021

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

IN THE MATTER OF ORDER 55 OF THE GRAND COURT RULES

IN THE MATTER OF SECTION 23 OF THE BILL OF RIGHTS

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

KEEBLE KEVIN KNIGHT

Appellant

-v-

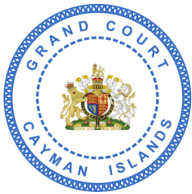
IMMIGRATION APPEALS TRIBUNAL

1<sup>st</sup> Respondent

-and-

ATTORNEY GENERAL OF THE CAYMAN ISLANDS

2<sup>nd</sup> Respondent



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NOTICE OF  
ORIGINATING MOTION

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**TAKE NOTICE** that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on the \_\_\_\_\_ day of \_\_\_\_\_ 2021 at \_\_\_\_\_ am/pm or as soon thereafter as counsel can be heard, by counsel on behalf of Keeble Kevin King (“the Appellant”) for an order in the following terms:

- i. The decisions of the 1<sup>st</sup> Respondent dated 24 August 2021 to refuse to grant the Appellant a de novo hearing and reconsider the decision of the Chief Immigration Officer of the Cayman Islands promulgated in December 2017 is wrong in law / not in accordance with the Law and that the matter should be remitted to the 1<sup>st</sup> Respondent to be reconsidered and decided according to the Law; and / or
- ii. The decisions of the 1<sup>st</sup> Respondent dated 24 August 2021 to refuse to Grant the Appellant’s appeal from the decision of the Chief Immigration Officer of the Cayman Islands is unreasonable

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

/ amounts to a Breach of Natural Justice and therefore the matter to be remitted to the 1<sup>st</sup> Respondent to reconsider their decision and reach a decision in accordance with the Law and Natural Justice.

- iii. A declaration that the Respondent and any decision maker, when considering an application for Permanent Residence must consider an applicant's right to a family life and private life pursuant to Section 9 of the Bill of Rights when considering whether not grant or reject an application for Permanent Residence, or
- iv. Section 30 (4) Immigration Act (2015 Revision) ("the 2015 Act") and Section 37 (3) Immigration (Transition) Act (2021 Revision) ("the 2021 Act") are incompatible with Section 9 of the Bill of Rights.

And for an order that the costs of and incidental to this Application be paid by the 1<sup>st</sup> Respondent.

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

1. The Appellant has resided in the Cayman Islands since 30 May 2005. The Applicant is a Jamaican National who applied for Permanent Residence in the Cayman Islands in May 2014.
2. Prior to be the Chief Immigration Officer of the Cayman Islands making a final decision in regards to whether or not the Appellant should be granted Permanent Residence of the Cayman Islands, the Appellant sat the History and Culture Test. The points that the Appellant was awarded for answering answers correctly in regards to the test formed the scores that he was awarded for Factor 6.
3. Prior to sitting the History and Culture test, applicants are contacted by the Department of Immigration (now Workforce Opportunities and Residency Cayman ("WORC")) and provided a document entitled History and Culture Test Advisory which notifies applicants that they can attend at the University College of the Cayman Islands ("UCCI") to enroll in the course "The History, Culture, Politics and Economy of the Cayman Islands". They are also informed they could read the following books:

- Bodden, J.A., **The Cayman Islands in Transition: The Politics, History and Sociology of a Changing Society** (ISBN-13:978-9766373221)

- Craton, Michael and the New History Committee (2003): **Founded Upon the Seas: A History of the Cayman Islands and Their People** (Kingston: Ian Randle Publishers, ISBN-10:0972935835)

- Goring, Kevin (2008) **Caymanian Expressions: A collection of sayings and phrases used in the Cayman Islands** (Grand Cayman: Gapseed Publishing)

- **Foundation – the Arts and Culture of the Cayman Islands** Volumes 1-4 (available at the Cayman National Cultural Foundation)

4. There are also a number of websites and Mobile phone apps which purport to have sample copies of the History and Culture questions and answers.<sup>1</sup>
5. Once an applicant has sat the test, they are notified of their results at a later date. The scores that the applicant receives are non-appealable. In a document entitled “Caymanian Status and permanent Residency Board Policies and Procedures 2012” the procedures state:
  2. The H & C Test can only be taken **once** by an applicant. In instances where the Law allows a person to re-apply for permanent residence after initially being refused, the previous score is used again when the Board is scoring the new application.
6. It is not known whether or not the Department of Immigration (now WORC) maintain a similar policy today due to the fact that the Caymanian Status and Permanent Residency Board Policies and Procedures 2012 are understood no longer to be relied upon and have not been replaced. For the avoidance of doubt, bar the guidance notes which accompany an application for Permanent Residence, there are no policies and procedures which govern the consideration of applications for Permanent Residency.
7. In December 2017, the Chief Immigration Officer of the Cayman Islands notified the Appellant that his application for Permanent Residence in the Cayman Islands was rejected. The Chief Immigration Officer notified the Appellant that he had been awarded 93 points. At the date that

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<sup>1</sup> <https://quizlet.com/256232348/cayman-history-culture-flash-cards/>

the Chief Immigration Officer reached his decision, the Law governing Permanent Residence was the 2015 Act. Section 30 (4) of the 2015 Act stated:

*(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.*

8. On 14 January 2018, the Appellant appealed the decision to reject his PR application.
9. On 14 December 2018, the Appellant's filed grounds of appeal against the Chief Immigration Officers decision.
10. In a decision dated 23 December 2019, the 1<sup>st</sup> Appellant notified the Appellant that they did not accept that there had been an error of Law in the decision of the Chief Immigration Officer.
11. The Appellant filed an Appeal with the Grand Court in regards to the decision of the Chief Immigration Officer. That Appeal was Cause No G11 of 2020 ("the original appeal") and in a written decision delivered on 31 March 2020, Ramsey-Hale J dismissed the appeal.
12. The original appeal was filed on the basis that the Chief Immigration Officer had erred in his consideration of Factor 1b of the Immigration Regulations which were in force when the decision was reached.
13. In a letter dated 18 June 2021, the Appellant asked the First Respondent to reconsider their decision of 23 December 2019. In that letter, the Appellant set out his involvement in the Cayman Islands and in particular his involvement in the Community.
14. In a decision dated 24 August 2021, the 1<sup>st</sup> Respondent determined that they had no power to consider the request of the Appellant. However, the Respondent went on to consider the reconsideration request and recognised that the Appellant was advancing a right to a private life

claim. The 1<sup>st</sup> Respondent then concluded that they were prevented from considering the Appellants private life due to the wording of Section 38 (3) of the Immigration (Transition) Act 2021.

15. The decision concluded with the Appellant being notified of his right to appeal the decision of the 1<sup>st</sup> Respondent to the Grand Court of the Cayman Islands.

### **Error of Law**

16. It is respectfully submitted that as a result of the Chief Immigration Officer not considering the Appellant's Right to a Private life pursuant to Section 9 of the Bill of Rights ("BOR"), the Chief Immigration Officer of the Cayman Islands erred in Law when rejecting the Appellant's PR application. By the 1<sup>st</sup> Respondent failing to recognise this fact in the decision of 24 August 2021 and ordering a *de novo* hearing, it is averred that the 1<sup>st</sup> Respondent has erred in Law and the Appeal should be granted.

17. When the Chief Immigration Officer reached their decision in regards to the Appellant, the relevant law was the 2015 Act. Section 30 (4) of the 2015 Act stated:

**(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.**

18. It is respectfully averred that Section 30 (4) of the 2015 Act is sufficiently ambiguous so as to ensure the 2015 Act is considered in a manner which is compatible with Section 9 of the Bill of Rights. In particular, the Chief Immigration Officer was required to consider a two stage test, i.e. firstly considering the Act / points system and then once reaching a decision in regards to the appropriate level of points, if the applicant has not received 110 points, the Chief Immigration Officer and the 1<sup>st</sup> Respondent were required to consider the Appellant's BOR rights. If it is the

case that requiring the Appellant to leave the Cayman Islands breaches his Section 9 rights, it is averred that the Appellant should have been granted PR. By failing to consider the Appellant's Section 9 rights, it is averred that the Chief Immigration Officer erred in Law.

19. By the 1<sup>st</sup> Respondent, acceding to the Appellant's request and reconsidering the decision of the Chief Immigration Officer in light of Section 38 (3) of the 2021 Act, as opposed to Section 30 (4) of the 2015 Act, the 1<sup>st</sup> Respondent has erred in Law. The 1<sup>st</sup> Respondent has failed to recognise that the decision of the Chief Immigration Officer was made under the 2015 Act and therefore this was the relevant law to consider when reconsidering whether or not the Chief Immigration Officer had erred when failing to consider the Appellant's Section 9 BOR rights.
20. Furthermore, the failure of the 1<sup>st</sup> Respondent to even consider the Appellant's Section 9 BOR rights amounts to a further error of Law.
21. In circumstances where the public official is prevented from / required not to consider Section 9 of the BOR by the Act, the Court must make a declaration of incompatibility. It would appear that the 1<sup>st</sup> Respondent's position is that they are prevented from considering Section 9 of the BOR by Section 38 (3) of the 2021 Act<sup>2</sup>. However, the correct Law at the time that the Chief Immigration Officer reached the decision, and therefore the Act and sections which should have been considered, was the 2015 Act which is different to the current law. By the 1<sup>st</sup> Appellant considering the 2018 Act in the reconsideration decision, the 1<sup>st</sup> Appellant has erred in Law and the matter should be remitted to the IAT so that they consider the matter under the correct Law.
22. It is the Appellant's position that Section 25 of the BOR requires the 1<sup>st</sup> Respondent to interpret Section 30 (4) of the 2015 Act so far as it is possible to do so to give effect to Section 9, and therefore apply a two stage test. As the Chief Immigration Officer failed to do this, the 1<sup>st</sup> Respondent should have agreed to reconsider the matter, granted the appeal and ordered a de novo hearing.

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<sup>2</sup> It is believed that the 1<sup>st</sup> Respondent incorrectly stated Section 38 (3) of the 2021 Act when they meant Section 37 (3) of the same act.

23. In the event that Section 30 (4) of the 2015 Act prevents a public official from consider whether or not to grant Permanent Residence to an individual outside of the points system it is averred that Section 30 (4) of the 2015 Act and Section 37 (3) of the 2018 should be declared incompatible with Section 9 of the BOR.

### **Conclusion**

24. Further to the above, it is averred that the 1<sup>st</sup> Respondent acted erroneously and unlawfully. Accordingly, the decision of the 1<sup>st</sup> Respondent should be set aside so that the Applicant's application can be reheard in accordance with law.

Dated: 17 September 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

And to: Attorney General of the Cayman Islands.