



No. 6

Notice of Originating Motion (0.8, r.3)

GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2022

In the matter of an application by KASSANDRA CARTAGENA DOMINGUEZ to apply for Judicial Review of a decision made pursuant to the Immigration (Transition) Act (2022 Revision).

And in the matter of the dismissal of an appeal against the decision of the Caymanian and Permanent Residency Board by the Immigration Appeals Tribunal.

BETWEEN:

KASSANDRA CARTAGENA DOMINGUEZ
APPLICANT

AND:

IMMIGRATION APPEALS TRIBUNAL
RESPONDENT

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on 2022 at or as soon thereafter as counsel can be heard, by counsel on behalf of Kassandra Cartagena Dominguez (the Applicant) for an order that the decision of the Immigration Appeal Tribunal (“IAT”), made in a letter dated 17 June 2022 wherein it decided “...that no valid grounds for a reconsideration were put forward by the Appellant’s agent and Attorney in letters dated 27th April 2022 which suggest that the Tribunal erred in its decision in letter dated 11 April 2022.” is wrong as a matter of Law and fact and that such decisions against the Applicant be set aside or alternatively that the matter be remitted to the IAT to reconsider the case pursuant to the applicable law in place at that time.

And for an order that the costs of and incidental to this appeal may be paid by IAT

AND FURTHER TAKE NOTICE that the grounds of this appeal are as follows:

GROUND ON WHICH RELIEF IS SOUGHT

1. This matter was originally determined according to the Immigration Law (2015 Revision ((hereafter referred to as the “2015 Law”). The applicable regulations at

the time were the Immigration Regulations (2017R). This matter was determined before the Grand Court by way of a Consent Order dated 24 August 2021 when the Notice of Motion was dismissed upon withdrawal when it was agreed that the Appeals Tribunal agreed to re-hear the Appellants appeal which gave rise to these proceedings on a de novo basis.

2. Sections 21 of the relevant Law provides, *inter alia*, as follows:

15. (1) *Save as otherwise provided in this Act, any person aggrieved by, or dissatisfied with, any decision of the Director's designate under section 37 may, within-*

- (a) *twenty-eight days of the communication of the decision to him; or*
- (b) *such longer period as the Chairperson of the Appeals Tribunal may, for good reason shown, allow,*

Serve notice on the Immigration Appeals Tribunal of his intention to appeal such decision.

(8) *An appeal under this section.....may be lodged on the ground, or grounds, and no other, that the decision in question is-*

- (a) *erroneous in law;*
- (b) *unreasonable;*
- (c) *contrary to the principles of natural justice; or*
- (d) *at variance with the Regulations.*

3. The above grounds of appeal are enshrined in all such similar grounds of appeal of any and all such public or administrative bodies. The manner in which the appeal is to be conducted is set out under section 22 of the Appeal.

4. Importantly, 22 (3) sets out that the IAT “..may.... in its absolute discretion, call upon either party or any persons as it deems necessary and relevant to address it.”.

(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.*

(5) *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.*

(6) *The law in force at the time of the rehearing by the Immigration Appeals Tribunal or the Board shall govern the proceedings under subsection (5).*

(7) *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.*

(8) *Where, in the opinion of the Immigration Appeals Tribunal, an appeal under this section was made frivolously, vexatiously or in bad faith, it may award costs on an indemnity basis.*

(9) *Representatives appearing on behalf of either party need not be persons having legal qualifications.*

(10) *An appeal to the Immigration Appeals Tribunal and matters referred to the Immigration Appeals Tribunal may not be remitted to the pertinent Board or to the Director of WORC.*

(11) *Decisions of the Immigration Appeals Tribunal and the pertinent Board shall be notified to the appellant within a reasonable period of time.*

5. Kassandra Cartagena Dominguez is a 36 year old female who was born in Columbia on the 1 March 1982. She is married and has two children. The oldest child lives in Columbia and the youngest who was born in February 2018 lives with her parents here in the Cayman Islands.
6. The Immigration Appeals Tribunal and the Appellant agreed following the filing of a Notice of Appeal that that Notice would be withdrawn subject to the Appellant's application for permanent residency being considered *de novo*. This therefore permitted the consideration of fresh evidence at the time of the hearing.
7. The gravamen of the Appellants appeal that it provided fresh evidence by way of a letter dated 16 September 2021 from Rev Torrance Bobb, O.M.H. The fresh evidence consisted of information that the appellant assisted with the Food Bank in a community outreach programme. She was very consistent during the year 2015 amounting to 96 hours. That letter also addressed the fact that throughout the years she has continuously contributed much needed food to the Food Bank from 2016 to present.
8. By a letter dated 17 December 2021 the IAT sought clarification by letter of the number of hours volunteered in 2015, 2016 and 2017. That letter further states that if the appellant failed "*...to provide the requested documentation could result in zero points being awarded....*".
9. By letter dated 30 December 2021 the First Assembly of God responded by letter and essentially repeated that already set out in their letter mentioned at paragraph 6 above sent on 16 September 2021.
10. In short, the letter seeks to provide the information requested by the IAT which is that (a) volunteers hours from 2015 for a period of 48 Saturdays for two hours on Saturday mornings amounting to 96 hours and (b) she "*...contributed...food in bulk on a bi-weekly basis from 2016 until present.*".

11. That IAT determined that although it would award the appellant additional points making a total of 102.6 points that it did not appear to award any additional points for community service and thus the appellant did not achieve sufficient points of 110.
12. The appellant discovered this error by the IAT and provided a further letter dated 22 April 2022 from the First Assembly of God from Rev Torrance Bob O.M.H. for a reconsideration. That letter further explained that there was a period until 2016 where the appellant volunteered her time. That time amount to 96 hours from 2015 to 2016. Thereafter, she donated food which amounted to \$200 per month and thus \$2,400 per annum which over a period of 5 years amounted to \$12,000.00. She contributed 48 hours per annum for 5 years which was 240 hours as well as making an equivalent donation of \$12K over the same five years period.
13. When one adds the two periods together of 96 and 240 hours a grand total of 336 hours is achieved.
14. It should be noted that a further letter was submitted on 19 April 2022 from the secretary of the Food Bank, Marie Eden, where she states that from January 2022 to 19 April 2022 that the appellant had contributed 40 hours of volunteer time.
15. In a letter dated 17 June 2022 the IAT appears to have erred in its understanding of the various letters written. It stated at paragraph 5, first page, of that letter, that having considered various letters and that in the September ad December 2021 letters that the writer “...*did not point out additional contributions by the appellant.*”. It is clear from both letters that the writer did speak to contributions made by the appellant. Importantly, the letter of September 2021 speaks to 96 hours for the period 2015 to 2016. The April 2022 letter speaks to the period from 2015 to 2016 of 96 hours and the additional time of 240 hours from 2016 to January 2022 of 240 when food was delivered to the food bank and packaged. Those two figures add up to 336 hours. There are no discrepancies in the various letters but a clear misunderstanding on the part of the IAT.
16. It would appear that this material error on the part of the IAT has led to no points being allocated to the Appellant.
17. Section 19(1) of the Constitution requires the Court to apply a “heightened scrutiny” requiring the decision-making body to justify its decision.
18. In the cases of *In the matter of an application for Permanent Residence by Hutchinson-Green/ In the matter of an application for Permanent Residence by*

Racz [2015 (2) CILR 75] heard at the same time by the Chief Justice, that Court held:-

"...that the court had to apply a standard of heightened scrutiny in considering the appeal, as the right to lawful administrative action (as set out in s.19(1) of the Bill of Rights) was engaged, requiring a public decision-making body to make clear its reasons for reaching its conclusions, which the I.A.T. had failed to do, and reducing the usual margin of appreciation given to administrative bodies so that the evidential burden would be on the body to establish the rationality of its decision..."

19. There is a singular failure to properly calculate the time contributed whether voluntarily or by donations of over \$2K per annum as set out in the regulations.
20. The Applicant is unable to understand that which was set out by the IAT. The two figures are clearly different and requires the most basic application of mathematics. One is 96 hours and the other is 336 hours (which is made up of 96 + 240 hours) and the reason for the difference is set out in the letter of 22 April 2022. What is the purported discrepancy identified by the IAT? It is clear on the face of its own letter that the IAT has determined that it did not take into account fresh evidence that had been submitted on 30 December 2021 and later on 22 April 2022 or if it was unclear then to summons any person as part of its duty and powers.
21. The IAT *"..may... in its absolute discretion, call upon either party or any persons as it deems necessary and relevant to address it."* The IAT is aware of the the various provisions and could if it had exercised its administratively powers properly have clarified what it identified as a discrepancy.
22. Kassandra Cartagena Dominguez humbly request that this matter be remitted back to the Immigration Appeals Tribunal for a proper consideration of her application for the grant of Permanent Residency and in particular the fresh evidence that the IAT was duty bound to consider, which it refused to do, by its failure to properly exercise its powers and thus permit the Appellant a fair hearing. It is humbly submitted that a consideration of that material would have attracted a further 9 points as per the regulations and thus permit the Appellant to reach the necessary threshold to secure the grant of permanent residency of a minimum of 110 points.
23. Further, if successful then the Appellant will request any and all costs incurred by her be awarded to her on an indemnity basis.

CHAMBERS
Clyde H. Allen
8 July 2022

