



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2022

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 37 (1) IMMIGRATION (TRANSITION) ACT (2021 REVISION).

GEORGE ANTHONY BASCO

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 \_\_\_\_\_ 2022 at \_\_\_\_\_ a.m./p.m. or as soon thereafter as counsel can be heard, by counsel on behalf of George Basco (“the Appellant”) for an order in the following terms:

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

- i. The decisions of the 1<sup>st</sup> Respondent dated 17 June 2022 and 18 October 2022 to refuse grant the Appellant's appeal against the decision of the Director of WORC dated 30 June 2021 is wrong in Law / not in accordance with the law or amounts to a Breach of Section 9 of the Bill of Rights ("BOR"), 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 17 June 2022 and 18 October 2022 to refuse to Grant the Appellant's appeal is unreasonable, irrational or amounts to a Breach of Natural Justice and therefore the matter is 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. Factor 4b is irrational, unreasonable, discriminatory and therefore it is to be rewritten to permit a applicant to include the salary of his spouse irrespective of whether they have a dependent child or not.
- iv. 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 BOR when considering whether or not to grant or reject an application for Permanent Residence, or
- v. Section 37 (3) Immigration (Transition) Act 2021 ("the Act") is incompatible with Section 9 of the BOR.

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 December 2011.
2. The Appellant is a 39 year old Filipino national. On 18 November 2020, when the Appellant was 37 years old he applied with the help of Immigration Solutions ("IS") for Permanent Residence

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("PR") and a Residency and Employment Rights Certificate ("RERC") pursuant to Section 37 (1) of the Immigration (Transition) Act, 2018 ("the 2018 Act").

3. At the time that the Appellant applied for PR and an RERC, he had developed a private life in the Cayman Islands on the basis of the time that he had spent in the Cayman Islands, his personal connections that he developed in the Cayman Islands, his employment and the involvement with the Christ the Living God Church.
4. As part of the Appellant's application he stated (incorrectly) that he had a Caymanian sister, Dolores Basco- Watler ("Dolores"). At the date of application Dolores had an RERC as the Spouse of a Caymanian. However, Dolores could have applied for the Right to be Caymanian as early as 11 May 2018.
5. On 2 July 2021, the Appellant sat the History and Culture Test ("the Test"). The test is 40 multiple choice questions which are designed to test an applicant's integration into Caymanian Society. Applicants are awarded 0.5 points for every question they answer correctly.
6. Prior to sitting the History and Culture test, applicants are usually 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:

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- 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)

7. 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.
8. It is not currently known whether or not WORC maintains a similar policy due to the fact that the Caymanian Status and Permanent Residency Board Policies and Procedures 2012 are understood to no longer to be relied upon and have not been replaced.
9. It is the Appellant’s position that potentially the questions that he was asked, and which formed part of the test that he sat, were either factually wrong, impossible to get right, were marked incorrectly or were unreasonable.
10. In a decision dated 14 July 2021, the Director of WORC rejected the Appellant’s PR/ RERC application. The Appellant was notified that he had been awarded 84.7 points.
11. It is noticeable that the Director of WORC made no reference to considering the Appellant’s Constitutional Rights / Human Rights, in particular his Right to a Private and family Life as per Section 9 of the BOR.

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12. Subsequently, on or around 27 July 2021, a Notice of Appeal was submitted to the 1<sup>st</sup> Respondent against the decision on behalf of the Appellant. As part of this request, the Appellant requested that the History and Culture Test results be disclosed as well as other information. None of this information was disclosed.
13. On 4 August 2021, Regina Jackson, an employee of the Department of WORC provided the Appeal Statement to the Appellant. On 31 August 2021, HSM Chambers on behalf of the Appellant submitted Grounds of Appeal. In the Grounds of Appeal, the following submissions were made:
  - i. The Director of WORC erred in regards to the award of points for Factor 2a and Factor 5.
  - ii. In the absence of policies the consideration of applications for PR was arbitrary and inconsistent.
  - iii. There had been no suitable disclosure by the Director of WORC therefore the decision was unreasonable.
  - iv. The Director of WORC had erred in Law by failing to consider the Appellant's Section 9 Rights and guaranteed by the BOR.
14. On 6 September 2021, Dolores applied for the Right to be Caymanian ("RTBC") on the basis of marriage pursuant to Section 28 (5) of the Act.
15. On 10 September 2021, as a result of information HSM Chambers received in regards to concerns in respect to the History and Culture a freedom of information request was submitted to the Department of WORC. On 14 September 2021, the Department provided to HSM Chambers the email from Susan Dixon to an unnamed person dated 13 September 2021.
16. On 13 September 2021, Susan Dixon, the Manager – Permits, Residency and Status in response to a query in relation to the History and Culture Test stated:

*I apologize for the delay in a response and advise that we are currently in the process of having the tests revised and take into account the change in government. We understand the concern as to how it could affect applicants' scores and the issue will be corrected as soon as possible.*

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17. Post 14 September 2021, HSM Chambers Grounds of Appeal in respects to PR denials included the above email. The first Grounds of Appeal which brought the above email to the attention of the 1<sup>st</sup> Respondent's was the Grounds of Appeal in regards to PR/054/2021 which was submitted on 14 September 2021. On 19 November 2021, the 1<sup>st</sup> Respondent granted PR/054/2021 a *de novo* hearing, although the basis of the grant was not due to PR/054/2021 establishing a Ground of Appeal of appeal pursuant to Factor 6.
18. Once an appeal has been filed with the 1<sup>st</sup> Respondent, the 1<sup>st</sup> Respondent notify the Department of WORC that the appellant is appealing the relevant decision and request disclosure of information. Upon receipt of that notice, in due course, an Appeal Statement is prepared, normally, by Regina Jackson, an employee of WORC. This Appeal Statement provides disclosure to the appellant and the 1<sup>st</sup> Respondent. The Appeal Statement that the Appellant was provided was dated 20 September 2021 and it contained a number of documents. However, noticeably it was missing the Appellant's History and Cultures Test Questions and Answers. This is despite the fact that Susan Dixon had acknowledged the fact that there were potential issues in the History and Culture test as of 13 September 2021. Furthermore, at no point has the Department of WORC nor the Caymanian Status and Permanent Residency Board ("the Board") notified the general public nor those individuals who applied for PR between 14 April 2021 and sometime in September 2021 that there were potential issues with the History and Culture Test that applicants sat.
19. On 16 November 2021, the 1<sup>st</sup> Respondent notified the Appellant that he had been successful in his appeal and requested further information be provided.
20. On 17 November 2021, Alastair David (an attorney with HSM Chambers) wrote to Susan Dixon, requested that the Board expedite Dolores' application for the RTBC. In the email it was pointed out to Susan Dixon that George would not be granted PR unless his sister was Caymanian. By November 2021, the Board has determined 205 applications in 2021 pursuant to Section 28 (5) of the Act granting 193 of them but denying 7 and concluding they had no power to consider 5. However, as of October 2021, the Board stopped considering applications pursuant to Sections

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28(5), 28 (10) and Section 37 (1) of the Act. The Board would only recommence consider applications pursuant to Section 28 (5) of the Act in January 2022.

21. On 18 November 2021, Susan Dixon responded to Alastair David's email and stated:

*"Good Morning Mr. Alastair,*

*The Board has a number of urgent matters for consideration when it convenes, however, I will bring this request to its attention when possible.*

*Be advised that:- the Board will be considering the right to be Caymanian applications when it convenes;  
we have a quantity of RTBC applications already processed and waiting for a firm schedule date;  
The wait time between processing and scheduling for consideration is about 12 or more weeks.*

22. On the same day, Mr. David wrote to the then acting Director of WORC, Laura Watler, requesting that she impress upon the Board that Dolores' application be dealt with as soon as possible.
23. On 5 December 2021, Mr. David once again wrote to Susan Dixon requesting that she confirms whether or not Dolores' application was to be considered before the beginning of 2022. The 1<sup>st</sup> Respondent's secretariat were also copied into this email.
24. On 9 December 2021, the Appellant submitted an affidavit setting out new evidence. He also requested that his application was not considered prior to 28 February 2022. In the affidavit the Appellant set out that he believed that Factor 4b was unreasonable and that he believed he should be provided with 9 points for Factor 4b. He also claimed 19 points for Factor 5.
25. On 9 December 2021, Mr. David wrote to the Director of WORC, Laura Water and asked once again that she uses her influence so that Dolores' matter be determined before 28 February 2022.
26. On 9 December 2021, the Tribunal responded to the Appellant's request stating that *"There is no facility in law to grant an adjournment for the reason requested. The appeal should be placed in*
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*the queue and considered on its merits at the appropriate time*". Mr. David forwarded this email to Susan Dixon and requested that the matter be dealt *"with a great degree of haste and if possible within the next 4-6 weeks"*. On the same day, Susan Dixon responded and stated;

*"The matter was mentioned to the Board and will be discussed in the new year once the Board resumes. As you are aware, it is the practice of the Secretariat and the Board to process and review applications in order of receipt so as to be fair to all applicants. There are applications which were received and waiting review prior to Ms. Dolores' application."*

27. Mr. David also further requested on 9 December 2021, that the Chairman reconsider his decision not to grant the adjournment. That application was rejected on 23 December 2021.
28. On 17 December 2021, HSM Chambers on behalf of PR/061/2021 and PR/067/2021 requested that the 1<sup>st</sup> Respondent reconsider the rejections of their denials to grant a *de novo* hearing. In the submissions made on 17 December 2021, the 1<sup>st</sup> Respondent were provided with the email of 13 September 2021, from Susan Dixon. On 5 April 2022, the 1<sup>st</sup> Respondent agreed to rehear the Appeals of PR/61/2021 and PR/67/2021.
29. On 16 February 2022, Mr. David wrote to Susan Dixon asking for an update on Dolores' application and was informed that Dolores' application remained pending. On 19 February 2022, Susan Dixon informed Mr. David that Dolores' application would not be expedited.
30. On 8 July 2022, the 1<sup>st</sup> Respondent reconsidered the Appellant's matter and awarded him 91 points. In their reconsideration of matters, the 1<sup>st</sup> Respondent did not award the Appellant any points for Factor 7 and also awarded him only 3 points for Factor 4b, 15 points for Factor 5 and 13 points for Factor 6.
31. On 22 July 2022, HSM Chambers, received verbal confirmation that Dolores' application had been granted.
32. On 2 August 2022, HSM Chambers requested that the 1<sup>st</sup> Respondent reconsider their decision. The reconsideration request was made on the basis that:

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- i. The 1<sup>st</sup> Respondent erred in regards to Factor 4b, Factor 5, Factor 6 and the Tribunal were unreasonable in regards to not agreeing to adjourn the matter pending the decision of the Board in regards to Dolores.
33. On 1 November 2022, the 1<sup>st</sup> Respondent rejected the Appellant's reconsideration request. In their decision, the Tribunal stated:

*"The Tribunal determined matters raised under Factor's 4b, 5, 6 and 7 had been previously addressed in its response letter dated 8<sup>th</sup> July 2022 and request for reconsideration is denied. The Tribunal found no error in law, natural justice or variance with the Regulations or any unreasonableness on its part and its decision recorded in its letter dated 8<sup>th</sup> July 2022 is upheld.*

#### **Unreasonable**

34. It is respectfully averred that the decision to refuse to adjourn the consideration of the Appellant's *de novo* hearing was unreasonable and therefore in the circumstances the Appeal should be granted and remitted back to the IAT for further reconsideration of matters.
35. Whether or not Dolores obtained the Right to be Caymanian was determinative to the Appellant's application as was made clear in numerous correspondence. Equally, the fact that the delays had occurred which were not the fault of the Appellant or his sister were also made clear.
36. On a review of the 2021 statistics as they pertain to the determination of applications pursuant to section 28 (5) of the Act it is noted that between October – December 2021, the Board did not consider any applications pursuant to that section. It is also noted that 94% of applications pursuant to Section 28 (5) of the Act were granted the Right to be Caymanian in 2021. Furthermore, the time between processing and scheduling an application pursuant to Section 28 (5) of the Act was roughly 12 or more weeks.<sup>1</sup> Therefore, Dolores could have legitimately expected her application to have been granted by 29 November 2021. Even if the 12 week period

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<sup>1</sup> Email of Susan Dixon dated 18 November 2022.

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commenced from roughly 12 weeks from the middle of January 2022, Dolores could have expected her application to have been considered by 11 April 2022.

37. Despite various requests to the Director of WORC, the Board and 1<sup>st</sup> Respondent, the Appellant was unsuccessful in his attempts to get his application adjourned to after Dolores' application was granted.

38. It is averred that the rationale set out in the email of 23 December 2022 for rejecting the request to adjourn was wrong in Law. In the email of 9 December 2021, the Chairman of the 1<sup>st</sup> Respondent stated:

*“There is no facility in Law to grant an adjournment for the reason requested. This appeal should be placed in the queue and considered on its merits at the appropriate time”*

39. It would therefore appear that the Chairman accepted that:

- i. He could grant an adjournment.
- ii. However there is no facility in Law to grant an adjournment on the basis requested.

40. It is respectfully contended that:

- i. The explanation provided by the Chairman is contradictory and unclear.
- ii. Section 18 (5) of the Act provides the power to the 1<sup>st</sup> Respondent to regulate their own procedure, therefore the Chairman had a wide discretion when it came to whether or not to adjourn the matter.
- iii. The decision to not adjourn the consideration of the application to after the Dolores was granted the Right to be Caymanian was unreasonable.

41. It is therefore averred that the matter should be remitted back to the 1<sup>st</sup> Respondent for a proper reconsideration of matters.

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Disclosure of the History and Culture Test.

42. As of 13 September 2021, the Immigration Authorities were aware that there were issues with the History and Culture Test sat after 14 April 2021. Despite, being aware of this fact and knowing that this could affect an applicants' ability to make submissions in regards to Factor 6, the Director of WORC chose not to publish this information nor include it as part of the appeal statement. It is the Appellant's primary submission that all history and culture tests should be disclosed as part of an appeal statement. However, in circumstances where the Director of WORC is aware that factually incorrect questions are being asked which could negatively affect applicant the Director is under a heightened duty to ensure that the appropriate level of disclosure is made.
43. Furthermore, the 1<sup>st</sup> Respondent was aware as of at the very latest 5 April 2022, that individuals were being provided tests which were faulty. On 5 April 2022, in the case of PR/061/2021 the 1<sup>st</sup> Respondent held:
- "It was determined that Grounds of Appeal had been established under Factor 6 – History and Culture Test as the Appellant was denied the opportunity to provide the correct answer and it is of the view that particular test is faulty."*
44. The same language was also used in the case of PR/067/2021 in which the 1<sup>st</sup> Respondent concluded that the test that this individual sat was faulty.
45. Submissions were made on behalf of the Appellant in both the original Grounds of Appeal and the reconsideration request and despite these requests the 1<sup>st</sup> Appellant did not disclosure or seemingly review the History and Culture Test documents.
46. Despite the 1<sup>st</sup> Respondent being aware of at least two individuals who sat tests which were faulty, the 1<sup>st</sup> Respondent failed to require the disclosure of the Appellant's test nor does it appear they obtain the tests themselves and make the necessary checks and then disclosure the information to the Appellant.

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47. It is therefore averred that the failure to disclose the Appellant's History and Culture Test as part of the Appeals process render the process unreasonable. It is therefore submitted that the Appeal should be granted and remitted to the 1<sup>st</sup> Respondent for a *de novo* hearing.

#### Factor 4b

48. The notes pertaining to Factor 4b state:

*“(1) An applicant must prove that he has sufficient resources through income and salary to support himself and any dependants accompanying him. Also his ability to provide sufficient funds for his and their healthcare, education, accommodation and maintenance is of paramount importance for prospective long term residents.*

*(2)-(3) ....*

*(4) In assessing an applicant's gross annual income from employment, the gross annual income of employment of his spouse will only be taken into account if there is at least one dependant child.”*

49. It would therefore appear that the rationale for Factor 4b is to ensure that the applicant has sufficient funds to support him and his dependants. However, the applicant can combine his income with that of his spouse if there is at least one dependant child. It is averred that Factor 4b, is unreasonable, irrational and amounts to a breach of Section 9 of the BOR in that it adversely discriminates or treats less favorably:

- i. Couples who are in a committed relationship but are not married or in a Civil Union.
- ii. Younger married couples / Couples in a Civil Union who are yet to have children.
- iii. Same Sex couples who are less likely to have children or have adopted children.
- iv. Older Couples whose children are no longer dependent upon them.
- v. Couples who cannot have children.

50. In the current appeal, the Appellant and his wife have been married since 2013 yet they have yet to be blessed with children. For this reason, despite the Appellant being able to support his wife, he has not been able to combine his salary with that of his wife's. If he had been able to do so,

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he would have received an extra 6 points for Factor 4b. The ability to have children does not show that an individual can support his family, it merely shows that they are biologically able to have children. It is therefore contended that this criterion is irrational and unreasonable and either the Factor should not permit the combination of spouses salaries or they should permit the combination of spouses salaries in all cases.

51. It is therefore contended that Factor 4b, is unreasonable, irrational and does not seek to satisfy its primary aim, i.e. to ensure that an applicant has sufficient resources to support their family. It is therefore contended that the Court should declare Factor 4b contrary to Section 9 of the BOR and rewrite the guidance notes to permit an applicant to combine his salary with his spouse, irrespective of whether they have dependent children or not. Furthermore, it is contended that the matter should be remitted to the 1<sup>st</sup> Respondent so they can reconsider the matter in the appropriate manner and with rewritten notes the Court had provided. .

#### **Factor 5**

52. In the Appellant's affidavit of 8 December 2021, he sought to be awarded 19 points for Factor 5 on the basis of various community activities. However, the Appellant was not awarded any points for:
- i. Training and Mentoring a Caymanian – Raidez Kaye Perez; and
  - ii. Making personal donations to a Community Minded Activity, i.e. tithing to Christ the Living God Church.
53. It should be noted that there is no policies for consideration of points system, save for the notes that accompany the various factors and check list which forms part of the application. The check list states:

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- Proof of Contribution to Community (if applicable)**  
You must provide proof of Community Service which must be evidenced by way of a letter from the head of the organisation or an executive member of the organisation board on *their letterhead*, or from the Caymanian being mentored, confirming:
- (a) the nature of participation or contribution (financial, physical, personal or other - if other, letter to describe participation/contribution),
  - (b) time period covered (i.e., the number of weeks, months, or years) during which such participation/contribution occurred
  - (c) actual participation time (i.e., number of hours per year)
  - (d) monetary amount or donation.
- In the case of sponsorship of a Caymanian - the letter should be accompanied by a certified copy of the Caymanian's passport ID page or other valid form of identification together with proof that he/she is a Caymanian together with proof of enrolment and course details from the tertiary institution during the relevant period along with your receipt of payments.
- Points are awarded based on thresholds defined in the Regulations and in the R-30 Guidance Notes.

54. In the Appellant's initial application he provided a variety of evidence which demonstrated that the Christ the Living God Church was heavily involved in community activities and therefore it is contended that the Tribunal should have accepted, and had sufficient evidence to accept, that his Tithes went to Community minded activities especially as the sums were donated to a Church. It is therefore averred that the 1<sup>st</sup> Respondent were unreasonable not to award the Appellant points for his Tithing.
55. Equally, it is contended that the 1<sup>st</sup> Respondent will accept letters confirming Caymanian mentorship from the parents of the Caymanian being mentored. This is especially true when the Caymanian is a child. In the current appeal, the Appellant provide proof in the form a letter from Radiez Perez parent that the Appellant had trained and mentored her and as such, the Tribunal were unreasonable not to award her points.
56. It is therefore averred that the Tribunal should remit the matter back to the 1<sup>st</sup> Respondent so that they can consider the matter appropriately.

### **Section 9 of the Bill of Rights.**

57. It is the Appellant's case that prior to the decision of the Director of WORC and the decision of the 1<sup>st</sup> Respondent he had established both a family life and a private life in the Cayman Islands which was therefore protected by Section 9 of the BOR.

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58. Furthermore, it is the Appellant's case that the decisions of the 1<sup>st</sup> Respondent dated 16 November 2021 and 22 February 2022, are wrong in law / not in accordance with the Law in that:
- i. The decision of the 1<sup>st</sup> Respondent without reasonable justification breaches the Appellant's right to a private life and family in the Cayman Islands; and
  - ii. The 1<sup>st</sup> Respondent failed to carry out its obligation to interpret the Act in a way which is consistent with Section 9 of the BOR.
59. It is the Appellant's primary contention that both the Director of WORC and the 1<sup>st</sup> Appellant are required to consider his right to a family and private life in the Cayman Islands pursuant to Section 9 of the BOR when considering whether or not to grant him PR. Any failure to consider Section 9 of the BOR (and Article 8 of the ECHR) and apply a reasonably justifiable test / proportionality test would render the decisions unlawful or unconstitutional. The Appellant avers that the Director of WORC and the 1<sup>st</sup> Respondent are required to first consider Factors one to nine of the points system and award points based upon the evidence submitted. In the event that the Appellant does not satisfy the required score, the Director of WORC and the 1<sup>st</sup> Respondent are then required to consider whether or not it would be proportionate / reasonably justifiable to interfere with the applicant's Section 9 (and Article 8 of the ECHR) Rights.
60. It is the Appellant's position that the decision to reject his PR application breaches his Section 9 BOR rights due to the fact that he will be required to leave the Cayman Islands, leaving behind, his family, his employment, the Church that he is a minister at and a wide circle of friends as he has no other permission to remain and work and support himself in the Cayman Islands.
61. By the Director of WORC and the 1<sup>st</sup> Respondent failing to considering the Appellant's Section 9 Rights it is contended that the decision breaches is Section 9 Rights and as such the decision is wrong in Law.
62. In the event that Section 37 (3) of the Act or any of the earlier iterations prevent the Director of WORC or the 1<sup>st</sup> Respondent from carrying out a proportionality / reasonably justifiable assessment it is averred that those laws, and in particular Section 37 (3) of the 2021 Act, are

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incompatible with Section 9 of the BOR and therefore the Court are required to make a declaration to that effect.

### Conclusion

63. Further to the above, it is averred that the 1<sup>st</sup> Respondent acted erroneously and unlawfully 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 the law.

DATED: 24 November 2022

*Hsm Chambers*

### HSM CHAMBERS

Attorneys for the Applicant

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.

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