



## TER OF GCR ORDER 55

ROHAN GIDARISINGH

Appellant

-and-

THE IMMIGRATION APPEALS TRIBUNAL

Respondent

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 NOTICE OF ORIGINATING MOTION
 

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**TAKE NOTICE** that the Court at the Law Courts, George Town, Grand Cayman will be moved on \_\_\_\_\_ at \_\_\_\_\_ or as soon thereafter as counsel can be heard, by counsel on behalf of Rohan Gidarisingh ("**RG**") on the following grounds:

1. By letter dated the 4<sup>th</sup> January 2023 ("**the Decision Letter**"), the Immigration Appeals Tribunal ("**the IAT**") unanimously dismissed RG's appeal against the decision of the Caymanian Status and Permanent Residency Board dated the 19<sup>th</sup> February 2022 ("**the CSPRB Decision**"). The CSPRB Decision was to revoke RG's right to Be Caymanian.
2. RG appeals against the IAT's decision on the following grounds:
  - i. Ground 1 – The IAT erred in law in its approach to and conclusion regarding whether the CSPRB Decision breached the section 9 rights to family life of RG and his family ("**the rights to family life**"). The IAT failed to apply the correct legal principles to this exercise, conducted no balance sheet exercise regarding the pros and cons of revocation, and provided no reasoned conclusions. It failed to do this in respect of either its own decision or the Appellant's contention before the IAT that the CSPRB Decision also failed to apply the correct legal principles. Instead, the IAT appears to have held that section 9 was satisfied because RG will remain in prison until his daughter's 18<sup>th</sup> birthday. This was wrong. The IAT should have applied the correct law and upheld the Appellant's appeal on the basis that the CSPRB Decision breached the rights to family life.

- ii. Ground 2 – The IAT erred in law by failing to recognise that the rights to family life continue after RG’s daughter reaches the age of 18. The Decision Letter demonstrates that the IAT erred in law by concluding that the rights to family life were satisfied given their finding that RG would remain in prison (and therefore in the Cayman Islands) until “*his child [...] surpassed the age of eighteen*”. The IAT gave no consideration to the rights to family life after RG is released. The rights to family life continue after the age of 18. The IAT was therefore required to consider how the CSPRB Decision would impact upon the rights to family life upon RG’s release and in the future. The IAT should have found that the CSPRB Decision was in error because the interference with rights was disproportionate and unnecessary.
- iii. Ground 3 – The IAT erred in law by failing to apply section 3 of the Children Act (2012 Revision). The IAT should have held that the CSPRB Decision was wrong because it did not give paramount consideration to the welfare and upbringing of RG’s daughter.
- iv. Ground 4 – The IAT erred in law by finding as a fact that the Appellant would be confined in prison for the next eight years. This was both unsupported by evidence and legally wrong. The IAT should have found that RG was eligible to be considered for conditional release on licence after serving sixty percent of the sentence imposed by a court (pursuant to section 7(1)(b) of the Conditional Release Act (2019 Revision)). If the IAT had applied the law correctly, they would have held that he is eligible for release after 2847 days (7.8 years) of his 4745 day sentence (13 years), which is calculated as the 9<sup>th</sup> February 2025. The IAT also failed to apply the law providing for release on temporary licence before that date. Had the IAT applied these laws, it would have considered the impact of an earlier removal of RG from the Cayman Islands, and in turn the impact on the rights to family life.
- v. Ground 5 – The IAT erred in law by failing to recognise that, on release, RG would become a prohibited immigrant and be subject to deportation. In failing to do this, the IAT did not apply the correct legal test applicable to the question of whether it is lawful for RG to be deported.
- vi. Ground 6 – The IAT erred in law by not holding that the CSPRB Decision was unlawful because it was made pursuant to section 33(1)(d)(iii) of the Immigration (Transition) Act 2021 (Revision). As RG submitted to the IAT, section 33(1)(d)(iii)

does not apply where the marriage breaks down/does not subsist after three years of the grant of the right to be Caymanian. This three year period had passed in RG's case, and therefore the CSPRB were not entitled to revoke his right to be Caymanian on this ground. The IAT failed to address this issue. It should have held that the CSPRB Decision was in error on this ground.

3. The IAT erred in law on these grounds.

**AND** for the following relief:

1. An order quashing the IAT's decision.
2. An order quashing the CSPRB Decision.
3. An order that RG's Right to be Caymanian be reinstated.
4. Such further or other relief as this Honourable Court shall deem appropriate.
5. Costs here and before the IAT.

Dated this 31<sup>st</sup> day of January 2023

Filed this        day of January 2023



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KSG Attorneys

TO:            The Clerk of Court

AND TO:      The Immigration Appeals Tribunal