



TER OF GCR ORDER 55

ALBERT STANFORD SCOTT

Appellant

-and-

THE 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 _____ at _____ or as soon thereafter as counsel can be heard, by counsel on behalf of Albert Scott ("**AS**") on the following grounds:

1. By letter dated the 13th January 2023 ("**the Decision Letter**"), the Immigration Appeals Tribunal ("**the IAT**") unanimously dismissed AS's appeal against the decision of the Caymanian Status and Permanent Residency Board dated the 17th February 2022 ("**the CSPRB Decision**"). The CSPRB Decision was to forfeit AS's RERC – Spouse of a Caymanian.
2. AS 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 AS's section 9 right to private and family. The CSPRB and IAT were aware that AS had moved to the Cayman Islands in 1997, some 25 years ago. Without his RERC, AS has no legal right to remain in the Cayman Islands and is liable to be deported from his home. It was incumbent upon the CSPRB to consider AS's section 9 rights when deciding whether to forfeit his RERC. It failed to do so (making no reference to the right at all within the Appeal Statement). The IAT failed to acknowledge the CSPRB's error. It should have held that the CSPRB decision was an error of law because the CSPRB neither took into account section 9 rights, nor illustrated how or whether it did so.

- ii. Ground 2 – The IAT committed further error of law because, instead of holding that the CSPRB decision was in error, it held that the CSPRB decision was justified on the ground of section 9(3) of the Bill of Rights. However, it provided no explanation at all as to why, in AS’s case, it is “*reasonably justifiable in a democratic society [...] to regulate the right to enter or remain in the Cayman Islands*”. No justification is given. Despite referring to the Grand Court case of *Ellington v Chief Immigration Officer*, there is no reasoning whatsoever to explain why the interference with rights was justified. It was required (among other things) to weigh up the competing factors, state which factors were considered, and explain its decision by reference to these factors.
- iii. Ground 3 – In considering the interference with AS’s section 9 rights, it was incumbent upon the IAT to ensure that it applied a rigorous standard of review. The IAT should have requested “*additional information or further particulars from the appellant*” under section 21(10) of the Immigration (Transition) Act (2022 Revision), to allow AS to give evidence of the effects that the CSPRB decision would have on his section 9 rights. Instead, the IAT proceeded to reject AS’s appeal despite being aware that, whilst unrepresented, AS had not responded to the CSPRB’s request for information.
- iv. Ground 4 – Further or alternatively, the IAT should have determined that the grounds of appeal (as stated in Ground 1) was made out and proceeded to a de novo hearing pursuant to sections 22(4) and (5), in which AS would have been given the opportunity to present fresh evidence as to the interference with his rights.

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 AS’s RERC be reinstated.
4. Such further or other relief as this Honourable Court shall deem appropriate.

