

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2023

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

IN THE MATTER OF ORDER 55 OF THE GRAND COURT RULES

OF SECTION 23 OF THE BILL OF RIGHTS

IN THE MATTER OF AN APPLICATION FOR A RESIDENCY AND EMPLOYMENT RIGHTS CERTIFICATE
UNDER SECTION 37 (1) IMMIGRATION (TRANSITION) ACT (2021 REVISION).



VENKADASUBRAMANIAN KRISHNAMOORTHY

Appellant

-v-

CAYMANIAN STATUS AND PERMANENT RESIDENCY BOARD

1st Respondent

-AND-

IMMIGRATION APPEALS TRIBUNAL

2nd Respondent

NOTICE OF
ORIGINATING MOTION

TAKE NOTICE that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on the _____ day of _____ 2023 at _____ a.m./p.m. or as soon thereafter as counsel can be heard, by counsel on behalf of the Appellant for an order in the following terms:

- i. The decision of the 1st Respondent dated 14 July 2021 was unreasonable and not in accordance with the Law. Therefore the matter should be remitted to the 2nd Respondent to be reconsidered and decided according to the Law; and / or
- ii. The decisions of the 2nd Respondent dated 30 November to refuse grant the Appellant's appeal against the decision of the 1st Respondent dated 12 July 2021 is wrong in Law / not in accordance with the Immigration Regulations (2019 Revision) and that the matter should be remitted to the 2nd Respondent with a direction that they consider the application of 14 July 2021 de novo.

And for an order that the costs, of and incidental, to this Application be paid by the Respondents.

AND FURTHER TAKE NOTICE that the grounds of this application are:

1. The 1st Respondent erred in law and acted unreasonably in rejecting the application dated 19 August 2021.
2. The decision of the 2nd Respondent not to grant the appeal amounts to an error of Law and was unreasonable.
3. The decisions of the Respondents amount to a breach of Natural Justice.

Background

4. The Appellant has resided in the Cayman Islands since October 2010.
5. On 19 August 2019, when the Appellant was 43 years old he applied for Permanent Residence ("PR") and a Residency and Employment Rights Certificate ("RERC") pursuant to Section 37 (1) of the Immigration (Transition) Act, 2018 ("the 2018 Act").
6. As part of his application, the Appellant sought to achieve 10 points for his qualifications which related to his role. In particular, the Appellant confirmed that he had obtained a Vocational

Certificate (greater than 1 year study) and to prove evidence of this fact he provided a certificate from the Food Craft Institute, Thuvakkudi, Tiruohirappalli confirming that had had been a student in the institute between 1991-1992. A further document was provided confirming that the Appellant had obtained a Certificate in Restaurant and Counter Service.

7. Further, as part of his application he provided a letter from his employer dated 2 August 2019 which set out that:
 - His annual base salary was US\$24,273 (CI\$19,903.86)
 - His income (salary and gratuities) in 2018 was US\$46,170.96 (CI\$37,860.18).
 - His salary between January 2019 to July 2019 was US\$36,997.63 (CI\$30,337.54)
8. The Appellant also provided information to the decision maker that he had two non-accompanying dependent children.
9. On 14 July 2021, the Appellant was notified by the 1st Respondent that his application had been rejected on the basis that he had not scored 110 points. The Appellant was informed that he had been awarded 88.5 points.
10. The Appellant was notified that he had scored 7 points for Factor 2b and 1 point for Factor 4b.
11. On 31 August 2021, the Appellant appealed against the decision to reject his application.
12. In an Appeal Statement dated 19 January 2022, the Director of WORC ("the Director"), presumably on behalf of the 1st Respondent, provided the rationale for the award of points. In regards to Factor 2b, the Director stated:

"The Appellant declared and provided proof of vocational certificate as his highest level of education as it pertained to his occupation. AS such, the Appellant was awarded the following points under this category -

 - *Points awarded – 7"*

13. In regards to Factor 4b, the Director stated:

"The Appellant was awarded the following points based on his letter of employment dated 2nd August 2019.

- *Points awarded – 1"*

14. The Director had stated in Factor 4a, that the Appellant earned a salary of US\$24,273.39 or C\$19,904.17.

15. The Grounds of Appeal were submitted on behalf of the Appellant by Anglin- Lewis and Associates Ltd. Those Grounds of Appeal focused on Factor 2b and Factor 5. It was the Appellant's contention that because he had provided proof that he had obtained a vocational certificate which took him longer than 1 year to obtain, he should be awarded 10 points.

16. In a decision dated 30 November 2022, the 2nd Respondent stated in regards to Factor 2b:

- **Factor 2b: Education**

The Tribunal noted the Appellant's Conduct Certificate No. 420 issued by the Food Craft Institute for the period of 1991-1992 and, his certificate Course in Restaurant and Counter Service at the 411 Food Craft Institute Thuvakudi Trichy for "Year: May 92" which was issued by the Department of Technical Education Govt of Tamil Nadu and consists of four subjects.

17. The 2nd Respondent did not explain why it was that they thought that the 1st Respondent was correct and did not deal with Factor 2b, in any greater depth or mention it again in their decision.

Error of Law

18. It is respectfully averred that the 1st Respondent erred in Law in respects to two specific ways

- The Award of 7 points for Factor 2b.
- The Award of 1 point for Factor 4b.

Factor 2b

19. It is contended that the Appellant provided sufficient evidence to the 1st Respondent for them to be satisfied that the certificate that he obtained had taken more than 1 year to obtain and as such the decision is erroneous and contrary to the Immigration Regulations (2019 Revision).
20. The Appellant provided:
- A sworn application form confirming that he had obtained a vocational certificate which took more than 1 year to obtain.
 - The vocational certificate.
 - A document containing the dates that he attended the college, i.e. between 1991-1992.
21. It is therefore averred that the 1st Respondent was incorrect to award him only 7 points as opposed to 10 points and it is further averred that the 2nd Respondent was incorrect not to grant an appeal and a *de novo* hearing.

Factor 4b

22. It appears that upon a review of the rationale in the Appeal Statement in regards to Factor 4b, the 1st Respondent proceeded on the basis that the Appellant's salary was US\$24,273.39. However due to the sparsity in the information set out in the Appeal Statement this is not clear. In reaching this conclusion, the 1st Respondent did not consider the Appellant's gross income from employment as required by the regulations. When consider the Appellant's gross income from employment, the 1st Respondent should have either:
- i. Relied upon the Appellant's 2018 gross income from employment and as such awarded 3 points for Factor 4b.
 - ii. Averaged the Appellant's monthly gross income from employment for 2018 and multiplied that by 5, and then added that figure to the Appellant's salary for 2019. If the 1st Respondent had proceeded on this basis, the Appellant would have been awarded 5 points for Factor 4b.

23. It is therefore averred that if the 1st Respondent relied upon the figure of either US\$24,273.39 or US\$36,997.63 they have erred in law and as such the decision of the 1st Respondent should be quashed and the matter remitted to the 2nd Respondent with the direction to proceed to a de novo hearing.

Unreasonable

Factor 2b

24. Furthermore, in the event that the 1st Respondent was not satisfied that the Appellant had provided sufficient proof that he had obtained a vocational certificate after studying for more than 1 year, the 1st Respondent should have deferred the matter to seek specific further proof from the Appellant in regards to his studies. By failing to defer the matter it is averred that the Respondent has acted unreasonable and as such the decision of the 1st Respondent should be quashed and the matter remitted to the Tribunal for reconsideration.

Factor 4b

25. At the current time it is not clear on how the 1st Respondent considered Factor 4b. It appears from the Appeal Statement that they proceeded on the basis that the Appellant's salary was US\$24,273.39. However, if they proceeded on the basis that the Appellant's last 12 months earnings was US\$36,997.63 it is averred that this is an unreasonable conclusion. While it is accepted that the letter of 2 August 2019, could give the impression that he only earned US\$36,997.63 in the 12 months proceeding the submission of the application, the letter is at best ambiguous because it refers January – July 2019, not August 2018- July 2019. It is therefore averred that the 1st Respondent should have either:
- i. Assessed the Appellant on the basis of his 2018 income and therefore awarded him 3 points.
 - ii. Assessed the Appellant on the basis of an average of his 2018 salary in addition to his income from January – July 2019.

- iii. Deferred the application to specifically request an updated information in regards to his salary.
26. By failing to proceed on the basis of any of the above, it is averred that the 1st Respondent acted unreasonably. As such the decision of the 1st and 2nd Respondent should be quashed and remitted back to the 2nd Respondent.

Breach of natural Justice

27. It is contended that both decisions of the Respondents amount to a breach of natural justice. Neither decision is sufficient, in respects to Factors 2b and 4b, so that the Appellant can be sure that neither the 1st Respondent nor the 2nd Respondent (only in respect to Factor 2b) have misunderstood an important matter in the application or reached the decision in an irrational basis. In neither decision do the Respondents set out how they reached their conclusion or provide a rationale explanation for their conclusions in regards to Factor 2b and Factor 4b. As such it is contended that both decisions amount to a breach of natural justice and as such should be quashed and the matters remitted back to the 2nd Respondent.
28. It is specifically noticeable that the 2nd Respondent never reached a decision in regards to the Appellant's Grounds of Appeal in regards to Factor 2b. It is therefore averred that this amounts to a fundamental breach of natural justice.

Section 22 (4) Immigration (Transition) Act (2022 Revision) ("the Act")

29. It is respectfully averred that if the decision of the 1st Respondent is erroneous in Law, amounts to a breach of natural justice or is unreasonable and the Court concludes as such, the matter should be remitted back to the 2nd Respondent for a *de novo* hearing.
30. Section 22 (4) of the Act is clear in that where a Ground of Appeal has been established the 2nd Respondent shall proceed to a rehearing of the original application which was subject to the Appeal.

31. Section 22 (5) of the Act has a *de novo* hearing will take place and the Appellant shall be permitted to provide fresh evidence. That fresh evidence is not limited to merely the Factors for which the error occurred.
32. At the current time, the Appellant is short of obtaining PR by 11.5 points. If the Appellant was to invest CI\$50,000 in a property or a business in the Cayman Islands he would achieve in the region of 20 points, which is more than sufficient to obtain PR.
33. Equally, if the Appellant was to achieve the maximum points for Factor 5 and if the Court were to accept that the Respondents erred in the award of points for either Factor 2b or Factor 4b, the Appellant would achieve sufficient points to obtain PR.
34. It is therefore respectfully contended that the Appellant can achieve PR in the current circumstances and as such the matter should be remitted back to the 2nd Respondent, so that the Appellant can provide fresh evidence, specifically in regards to Factors 2,3, 4 and 5.

Conclusion

35. Further to the above, it is averred that the 1st Respondent and 2nd Respondent acted unreasonably, erroneously and unlawfully and in breach of natural justice. Accordingly, the decision of the 1st and 2nd Respondents should be set aside so that the Applicant's application can be reheard in accordance with the law.

DATED: 16 March 2023

HSM CHAMBERS

HSM CHAMBERS
Attorneys for the Applicant

TO: The Clerk of the Court

AND TO: The Chairman of the Caymanian Status and Permanent Residency Board.

And To: The Chairman
Immigration Appeals Tribunal
Government Administration Building
Elgin Ave,
George Town
Grand Cayman

And to: Attorney General of the Cayman Islands.