



COURT OF THE CAYMAN ISLANDS

CAUSE: G OF 2023

R OF: Section 23(2) of the Immigration (Transition) Law 2018

AND: IN THE MATTER OF: Section 24 of the Cayman Islands Constitution Order 2009

AND: IN THE MATTER OF SECTION 21 OF THE IMMIGRATION (TRANSITION) ACT (2022 REVISION)

AND: IN THE MATTER OF ORDER 55 RULE 4(2) OF THE GRAND COURT RULES 1995 (REVISED)

BETWEEN: BERNARDA AMADOR GOMEZ APPELLANT

AND: IMMIGRATION APPEALS TRIBUNAL RESPONDENT

NOTICE OF MOTION

TAKE NOTICE THAT the Court at the Law Courts, George Town, Grand Cayman will be moved on at on the day of or as soon thereafter as counsel can be heard, by counsel for **THE APPELLANT** for the following relief namely :-

1. An Order setting aside the Decisions of the Immigration Appeals Tribunal as relates to the refusal, of the grant of Residency and Employment Rights Certificate made by the Appellant; on the ground that the decision is erroneous, and failed to take into account and adequately consider or at all, all of the matters that related to the compilation of the points award system in favour of the Appellant.

BACKGROUND

1. The Appellant first filed Notice of Appeal on November 21 2017, with the Respondent; against the decision of the Acting Chief Immigration Officer to refuse the grant of permanent residence.
2. **THAT** by a letter dated November 8 2019, the Respondent advised the Appellant that ..."**grounds of appeal were not established...Accordingly, this appeal is unanimously dismissed**"... A copy of this letter is produced as **Exhibit "BAG1"**
3. **THAT** in the **Appeal Statement** dated November 26 2017, under the heading of **Factor 3-Local Investment**, the Appellant was awarded "**0**" points, with the reason advanced and being advised as ..."**The Appellant has not invested in property of a locally licensed company**"... a copy of this document is produced as **Exhibit "BAG2"**

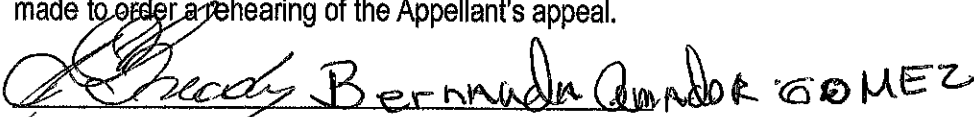
4. **THAT in the Immigration Regulations (2019 Revision) at Factor 3(i) the requirement for the award of points under this category is clear in that it requires ... "investment in property in the Islands and or(ii) Investment in a locally licensed company" ... and it therefore renders the reason for the decision as produced at point 3 above, as being wrong in law and in all the circumstances; as there is no such requirement stated in the Regulations. A copy of the Regulation is produced as Exhibit "BAG3"**

PROCEDURAL IRREGULARITY

1. **THAT** as in the case of *Mohanty v Medical Board*, where the issue of unreasonableness was considered; it is submitted that a similar scenario is here being played out. What is more, is that it states in **Section 24 of the Cayman Islands Constitution Order 2009**, that decisions of public officials must be "**lawful, rational, proportionate and procedurally fair**". Quite apart from the fact that this is an obligation that applies to all decisions of the Respondent, and it is submitted that the conduct of the Respondent was not in accordance with the Regulation. In the Cayman Islands, Court of Appeal's case of **Immigration Board and Governor In Council v Streeter and K Coast Development 1999 CILR**, which case traversed the statement, which was made by Lord Green in the **Wednesbury** case, at p229 and 233-234... There he stated..."**It is true the discretion must be exercised reasonably...a person entrusted with a discretion must, so to speak direct himself properly...He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he is to consider. If he does not obey these rules he may truly be said, and often is said to be acting unreasonably ... The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely have refused to take into account or neglected to take into account matters which they ought to take into account...it may still be possible to say that although the local authority have kept within the four corners they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere"**... Respectfully it is submitted, that the Appellant failed to adequately consider or at all, the full matters by which the Appellant might have achieved the qualifying points award necessary to be granted Permanent Residence; particularly as relates to the matters of Factor 3 considerations.
2. **THAT** furthermore, it was also said that..."**Where an Act of Parliament confers an administrative power [on a statutory body] there is a presumption that it will be exercised in a manner which is fair in all the circumstances...Fairness will very often require that a person who may be adversely affected...will have an opportunity to make representation...before...or after it is taken, with a view to procuring its modification..."** (see Lord Mustill in *ex-parte Doody* [1994]1 AC 531 . It is submitted that the decision of the Respondent, in these given circumstances, falls squarely within the realms of the foregoing statement of Lord Greene; thus rendering the decision currently being appealed, to be wrong in law and in all the circumstances.

- 3. **THAT** in the decided local case of **Hutchinson-Green and Alisha Myriah Racz (2015)(2) CILR 75 (Grand Court)**, the Chief Justice referring to the duty of the court, opined that there would be times where the court in some cases would be more stringent in scrutinizing the decisions made by a body such as this honourable tribunal is. He said..." **It is a duty that will arise depending on the context of the case, so as to place the focus more closely upon the details of the decision making of the authority whose decision is brought into question. In such cases, which will more readily arise in the human rights context, the court should not necessarily be looking for an extreme degree of unreasonableness, capriciousness or absurdity on the part of the decision maker before intervening, something less will do"...**

AS SUCH the Appellant prays that the Decision imposed by the Respondent be set aside, and a Declaration made to order a rehearing of the Appellant's appeal.


 for **BERNARDA AMADOR GOMEZ**

Dated the 21 day of March 2023

TO: The Clerk of the Court
AND TO: The Director of Border Control
AND TO: The Attorney General

This **Notice of Motion** was filed by Brady Attorneys at Law, Second Floor, Anderson Square, George Town, Grand Cayman, P O Box 11740 APO, KY1-1009, Cayman Islands, British West Indies.