



D COURT OF THE CAYMAN ISLANDS

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CAUSE: G OF 2023

IN THE MATTER 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)

YOGESH EKANATH NARVEKAR

APPELLANT

AND

THE 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 Decision 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 in law, and failed to take into account and or 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. **THAT** the Appellant made application on July 9 2020, for the grant of the right to reside permanently in the Cayman Islands; which was refused by a letter dated November 16 2021.
2. **THAT** the Appellant appealed this decision, to the Immigration Appeals Tribunal, on the 2nd day of December 2021, and by a letter dated 13 January 2023 from the Tribunal, the Appellant was

advised that ...” **The Tribunal is minded to deduct points under Factor 5 Community Involvement, the Appellant is invited to make submissions as to why points should not be deducted from his overall permanent residence points”... If contribution includes the mentorship/training of a Caymanian the letter should be accompanied by a) Letter detailing nature of the mentorship/training, number of years, hours per year, if on the job training of Caymanians” b) a certified copy of the Caymanian’s passport identification page, or other form of valid identification c) proof that the recipient is Caymanian”...**

3. **THAT** by a further letter dated March 9 2023 the Tribunal wrote to the Appellant stating the following...” **The Tribunal noted its previous decision of 6th October 2022 at which it was determined that grounds had been established under Factor 2(a) Education and Factor 5 Community Involvement....[and] carefully considered the Change of Circumstance documents that were received on 8th February 2023... and records that the Appellant accumulated one hundred and six [106] points”...**
4. **THAT** in that said letter, referring to Factor 5, the Respondent erred in law by not taking into account, or alternatively failing to adequately consider or at all, the fact that the Appellant’s **“training and mentoring of Caymanians was “within” as well as “outside” of normal working hours”** and therefore the Respondent unlawfully, failed to credit the Maximum twenty (20) points for the Appellant’s contribution to the training of Caymanians.
5. **THAT** the logistics of the environment which facilitated the “training processes” could only be accessed during the “working hours” based upon the shift system of work and the complications of production and catering to, paying guests of the Appellant’s employer’s hotel, which would ensue, as the “trainees” would necessarily be in the way of the next shift’s efficiency of their operations; as relates to “their” specific deliverables.
6. **THAT** the different aspects of hotel operations that the Appellant engaged in respect of the Trainees, required adequate and specific training material, infrastructure, equipment, soft wares etc. which would not be available outside of the workplace environment, as well as affording the unobstructed access to them, if they were not accessed during the work hours, and no other times would have adequately facilitated the training processes, that the Appellant undertook, hence respectfully, the Appellant submits that, the full and fair assessment of the Appellant’s **“community involvement points award”** were not assessed by the standards of natural justice; fairly assessed and consequently awarded to the Appellant, by the Respondent.
7. **THAT** it was not possible to teach them, outside of the work place environment, and the Caymanian staff that the Appellant trained, was completely new in the hotel industry, requiring more time and extra attention, than would other staff, and even though the Appellant trained them

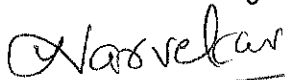
at the work place; the Appellant was forced to devote extra hours out of his own work schedule and time; in order to facilitate their trainings.

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 Respondent 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 5 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.



YOGESH EKANATH NARVEKAR

Dated the 4 day of April 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.