



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2023

IN THE MATTER OF SECTION 23 (2) OF THE IMMIGRATION (TRANSITION) ACT (2022 REVISION)

IN THE MATTER OF ORDER 55 OF THE GRAND COURT RULES

IN THE MATTER OF SECTION 23 OF THE BILL OF RIGHTS

AND IN THE MATTER OF AN APPLICATION FOR A RESIDENCY AND EMPLOYMENT RIGHTS CERTIFICATE PURSUANT TO SECTION 37 (1) IMMIGRATION (TRANSITION) ACT (2022 REVISION).

SOPHIA GAYLE

Appellant

-v-

DIRECTOR OF WORC

1st Respondent

-&-

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:

This Motion was filed by HSM Chambers, Attorneys at Law for and behalf of the Appellant herein whose address for service and correspondence is 68 Fort Street, George Town, PO BOX 31726, Grand Cayman KY1-1207, Cayman Islands

- i. The decision of 1st Respondent dated 9 June 2021 amounts to a breach of the Appellant's right to family life as protected by Section 9 of the Bill of Rights.
- ii. The decision of the 1st Respondent dated 9 June 2021 was unreasonable and not in accordance with the Law due to the fact that potentially the History and Culture Test that the Appellant sat contained questions which could not be answered correctly within it.
- iii. The decisions of the 2nd Respondent dated 26 May 2023 was unreasonable and as such the matter should be remitted to the Tribunal for reconsideration.
- iv. The decision of the 2nd Respondent dated 26 May 2023 amounts to a breach of the Appellant's Section 9 rights as protected by the Bill of Rights.

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 Appellant has resided in the Cayman Islands since January 2012.
2. The Appellant is a 41 year old Jamaican national. On 16 September 2020, when the Appellant was 37 years old she 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 Act").
3. In the application it was made clear that the Appellant's mother had a serious Diabetic Eye disease and it was the Appellant who was taking care of her. The Appellant's mother is Normadel Evadney Robinson – Hodgson and is Caymanian. It is believed that a letter from Dr Foley (the Appellant's Mother's Doctor) was provided with the application.

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4. On 23 April 2021, the Appellant sat the History and Culture Test. It is known that the test which the First Respondent was responsible for contained errors in it. These errors were in tests between April 2021 and were corrected by September 2021. It is not known if Appellant's test was one of those tests which error in it.
5. In a decision dated 9 June 2021, the Appellant's application was rejected by the 1st Respondent. The Appellant was awarded only 102.5 points and as she did not cross the 110 threshold she was not awarded PR/ RERC.
6. In the Notice of Appeal which was submitted the 2nd Respondent was further informed of the Appellant's mother's condition and it was made clear that the Appellant was her only helper and the effect that the rejection would have on her. It is contended that the Appellant's relationship with her mother has a dependency which is beyond the normal and therefore amounts to a Family Life pursuant to Section 9 of the BOR.
7. It appears that Grounds of Appeal were submitted out of time on 22 February 2022 and not considered however, the Notice of Appeal was considered by the 2nd Respondent.
8. In a decision dated 8 July 2022, the 2nd Respondent rejected the Appellant's appeal.
9. In a letter dated 27 July 2022, the Appellant requested the Tribunal reconsider their decision. The basis for this reconsideration was:
 - i. The issues with the History and Culture Test.
 - ii. The Disproportionate effect the rejection would have on the Appellant and her Caymanian mother which would amount to a Breach of Section 9 of the BOR.
10. On 26 May 2023, the reconsideration requested was rejected.

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11. The Appellant would submit that the decisions of the Respondents to reject her application / appeal amounts to an error of Law because the decisions breaches her rights protected by Section 9 of the BOR and that this breach cannot be reasonably justified.

Section 9 of the BOR

12. It is the Appellant's case that her relationship with her mother amounts to a family life in the Cayman Islands. It is respectfully averred that because the Appellant's mother is dependant upon her and because the Appellant her mother's is primary carer this dependency is above the norm and as such is protected by the BOR.
13. The consequence of the decision to reject her application and appeal means that the Appellant has to leave the Cayman Islands and therefore this has a disproportionate adverse effect on her Section 9 Rights. Furthermore, it is contended this cannot be reasonably justified and as such her Section 9 Rights have been unlawfully breached.
14. It is respectfully contended that both the Respondents had sufficient information before them to conclude that the Appellant had established a family life in the Cayman Islands on the basis of her relationship with her mother. By the fact that they then failed to consider this family life (or were not permitted to by the Act), means that they have acted contrary to Section 9 of the BOR and therefore unlawfully.
15. At the current time Section 37 (3) of the Act has been declared incompatible with Section 9 of the BOR but this matter will be considered by the Privy Council in due course. It is the Appellant's primary contention that because the failure of the Respondents amounts to an error of Law the matter should be remitted to the 2nd Respondent so that they can consider the matter afresh when either the Law is changed or when guidance is provided from the Courts.

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History and Culture Test

16. The decision letter of 26 May 2023, is not very clear as to whether or not the Appellant was asked questions which could be answered correctly or if she provided incorrect answers to questions which did not have the right answer. If it is the case that the Appellant provided incorrect answers to questions which did not have a correct answer it is averred that the test was unreasonable and as such, the matter should be remitted to the 2nd Respondent and the Appellant be given an opportunity to sit a new test and provide new information as to her current circumstances in the Cayman Islands.

DATED: 23 June 2023

HSM CHAMBERS

HSM Chambers

TO: The Clerk of the Court

And To: The Director of WORC

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

And to: Attorney General of the Cayman Islands.

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