



COURT OF THE CAYMAN ISLANDS

CAUSE: G OF 2023

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

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: VENKADASUBRAMANIAN KRISHNAMOORTY 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 are erroneous in law. A copy of this decision is produced as **Exhibit "VK1"**

BACKGROUND

1. The Appellant filed Notice of Appeal out of time on January 10 2022 which was accepted by the Respondent, against the decision of the Director of WORC to refuse the grant of permanent residence. A copy of this letter is produced as **Exhibit "VK2"**
2. **THAT** by a letter dated September 14 2023, the Respondent advised the Appellant that ... **has not attained sufficient points to be granted permanent residence**... in effect unlawfully endorsing the decision to refuse Permanent Residence, by injecting the Respondent's own opinion, unsupported by any Law or Regulations, by declaring under the Factor 5 section that the three reference Letters submitted in support of the Appellant's Application individually and collectively ... **does not meet the criteria set out in the Regulations to allow the assessment of points**... when such **criteria** as referenced in that observation, is not defined either in the Immigration Regulations nor indeed the Immigration (Transition) Act to justify such a decision.

3. **THAT** the deduction of points as suggested in the Letter dated April 12 2023, was unlawful as at the time that the Appellant's Application was submitted, the relevant policy and law which was then current and applicable, favoured the Appellants position, and nowhere in the Law or Regulations, was any legislative authority then in effect nor thereafter, to authorize the Respondent's retrospective application of any points deduction ... **"based on the updated statistics from WORC"**... and that decision was therefore ultra vires and was therefore unlawful in its application, and to adversely imp[act] the Appellant's points calculation, ... therefore the Respondent's decision should be quashed; having declared that... **"Accordingly, the appeal is unanimously dismissed"**...

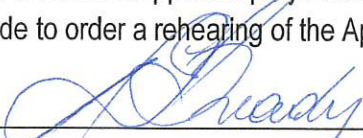
PROCEDURAL IRREGULARITY

1. **THAT** at all material times, it was the Respondent's failure to adequately consider the foregoing points raised and this failure resulted in the denial of Permanent Residence to the Appellant.
2. **THAT** as in the case of *Mohanty v Medical Board*, where the issue of that matter was unreasonableness; 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 principles of natural justice in all the circumstances. 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 [unlawfully]... 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's Application was adversely impacted by the Respondent's conduct in all the circumstances.
3. **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, particularly as relates to the Appellant's Referees, as well as having unlawfully retrospectively, applying the **"updated statistics from WORC" ... to influence their endorsement of the failure to grant the Appellant's Application;** falls squarely within the realms of the foregoing statement of Lord Greene; thus rendering the decision, as being also **"unreasonable"** in all the circumstances.

4. **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.



(Attorney at Law (for the Appellant))

Dated the 12 day of October 2023

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