

Cayman Islands, was in error of Law including being a breach of Section 9 of the Bill of Rights (“BOR”), and that the matter should be remitted to the First Respondent to be reconsidered and decided according to the Law; and / or

- ii. THAT the whole of the said decision of the First Respondent dated 20th November 2023 is unreasonable, irrational or amounts to a Breach of Natural Justice and therefore the matter is to be remitted to the First Respondent to reconsider its decision and reach a decision in accordance with the Law and Natural Justice; and
- iii. A DECLARATION THAT the First Respondent and any decisionmaker, when considering an application for Permanent Residence where the Applicant has been resident in the Islands as a dependent of a Caymanian, must consider an Applicant’s right to family and private life pursuant to Section 9 of the BOR when considering whether or not to grant or reject an application for Permanent Residence, and/or
- iv. A DECLARATION THAT Section 39 (4) Immigration (Transition) Act 2022 (“the Act”) is incompatible with Section 9 of the Bill of Rights for this Appellant on the true facts of his case; and
- v. if needed THAT this matter be stayed pending Judicial Review of the failures of the Second Respondent/Cabinet to provide for the section 9 Rights of this Appellant on the true and full facts of his case;
- vi. and if needed that, absent an undertaking from the Second Respondent to protect the Appellant from any attempts to remove him from the Cayman Islands or to require him to pay for “time”, that the Respondents, their servants or agents or their principals be restrained from such actions pending this Appellant being concluding a fair and just process to ensure protection of his Rights under the Constitution given the exceptional facts of his case.

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 2008. He has lived in Cayman for the past 15 years 9 months with his mother, who is Caymanian and his only family.
2. The Appellant held Permanent Residence from the age of 13 as a dependent of his mother, a Caymanian since 2017. He has lived in Cayman his entire adult life, and for that time has only known life in the Cayman Islands as a legal resident.
3. The Appellant, during his 15+ years in these Islands, has developed both a Private and Family Life that engage section 9 of the Bill of Rights.

4. It is the Appellant's case that the decision to not award him Permanent Residence breaches his right to a private life and family which he had established the Cayman Islands. It is averred that this decision is not reasonably justifiable / proportionate in the exceptional circumstances of this case.

Wrong in Law

5. It is the Appellant's case that prior to the said decision he had established both a private life and family life in the Cayman Islands over his 15 years and 9 months residence in these Islands which was protected by Section 9 of the BOR.
6. Furthermore, it is the Appellant's case that the decision of the First Respondent dated 20th November 2023, is wrong in law / not in accordance with the Law in that:
 - a. The decision of the First Respondent without reasonable justification breaches the Appellant's right to a private life in the Cayman Islands; and
 - b. The First Respondent failed to carry out his obligations to this Appellant, on the exceptional facts of his case, to protect his rights under Section 9 of the BOR.
7. It is the Appellant's contentions that (a) each and every case/applicant must be considered on the unique facts of each and every case and (b) both the Board and the First Respondent were, given the facts of his case, required to consider his right to a private and family life in the Cayman Islands pursuant to Section 9 of the BOR when considering whether or not to grant his PR. Any failure to consider Section 9 of the BOR (and Article 8 of the ECHR), on the facts of this Appellants' case, and/or afford him a process with a reasonably justifiable test / proportionality test rendered the decisions unlawful and unconstitutional.
8. It is the Appellant's position that the said decision breaches his Section 9 BOR rights due to the fact that he will be required to leave the Cayman Islands, leaving behind his mother and friends and without any country to return to that he has any knowledge or experience in as an adult.
9. In the event that Section 39 (4) of the Act is alleged to prevent the First Respondent from carrying out a proportionality / reasonably justifiable assessment, it is averred that Section 39 (4) of the 2022 Act, is incompatible with Section 9 of the BOR and therefore the Court is required to make a declaration to that effect.

Unreasonable / procedurally unfair / breach of natural justice.

10. The First Respondent at all material times knew, of (a) the Constitutional challenges to its rulings, (b) the facts of this Appellant's case and his 2018 application¹ (to retain his PR status) being made before his 24th birthday and (c) that the Second Respondent had failed in his duties to the Appellant to protect his Constitutional Rights grounded in his residence in these Islands now 15+ years, from the age of 13, with his mother, who is Caymanian.

¹ Pursuant to section 32 Immigration Law (2015 Rev)

Conclusion

11. Further to the above, it is averred that the First Respondent acted erroneously and unlawfully and in breach of natural justice. Accordingly, the decision of the First Respondent should be set aside, and the relief sought herein granted.

DATED: 17 December 2023

Chapmans

CHAPMANS
Attorneys for the Appellant

TO: The Clerk of the Court

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

AND TO: Attorney General of the Cayman Islands.

This **MOTION** is filed by Chapmans, Attorneys-at-Law for the Appellant whose address for service is
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