



AND COURT OF THE CAYMAN ISLANDS

ION

CAUSE NO: OF 2023

IN THE MATTER OF THE IMMIGRATION (TRANSITION) ACT (2021 REVISION)

AND IN THE MATTER OF AN APPEAL PURSUANT TO ORDER 55 OF THE GRAND COURT RULES (2023 CONSOLIDATION)

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF THE IMMIGRATION APPEALS TRIBUNAL (IAT) DATED 30 NOVEMBER 2023

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on at or as soon thereafter as counsel can be heard, on behalf of JOHN CARLO JACABAN MENDOZA for an order that:

1. Until such time as the substantive matter is heard and determined by the Honourable Court that the Appellant shall be permitted to remain and work in the Cayman Islands.
2. The decision of the Immigration Appeals Tribunal be set aside and remitted for a rehearing 'de novo' with guidance by this Honourable Court on the correct procedure or manner in which the Immigration Appeal Tribunal's discretion and/or to the weight to be attached to the Appellant's evidence and/or the points to be awarded under Schedule 2 of the Immigration Regulations (2019 Revision) are to be assessed.
3. An Order for the costs of and incidental to this appeal to be paid out by the Respondent.
4. On 15th March 2021 the Appellant, John Carlo Jacaban Mendoza, applied for permanent residency pursuant to S. 37 of the Immigration (Transition) Act (2021 Revision). The said application was considered by the Immigration Board on 31st October 2022 and was rejected. On 24th November 2022 the decision of the Board was appealed to the Immigration Appeals Tribunal (IAT) pursuant to S. 37 of the Immigration (Transition) Act (2021 Revision). The IAT deferred the matter which was communicated on 4th August 2023 to the Appellant in order to provide changes to circumstances which were remitted to the IAT on 30th August 2023 to which the IAT communicated its decision by letter on 30th November 2023. The Appellant appeals that latter decision pursuant to S. 23(2) of

the Immigration (Transition) Act (2021 Revision) and within the stipulated 28 (twenty-eight) days for an appeal.

AND FURTHER TAKE NOTICE that the grounds of this appeal are:

1. That the Immigration Appeal Tribunal erred as a matter of law or procedure in failing to consider and/or properly award the points in compliance with Schedule 2 of the Immigration Regulations (2019 Revision) and/or in the exercise of its limited discretion.
2. Under Factor 4 of Schedule 2 of the Immigration Regulations (2019 Revision) the Appellant was awarded 20 (twenty) points.

Factor 4 – Financial Stability

- (a) Evidence of cash and savings held locally: 15 (fifteen) points; and
- (b) Evidence of salary and income: 5 (five) points.

We do not accept the assessment of the points awarded under **Factor 4 (b)**. We respectfully submit that the Appellant should have received **7 (seven) points**.

Under Factor 4 (b) Mr. Mendoza applied for his young child – Kurt Mendoza to be listed as his Dependant. The Caymanian Status and Permanent Residency Board or the Director and the IAT when calculating Factor 4 (b) would have made an **annual deduction of CI\$12,000.00** instead of **CI\$15,000.00**, given the child is not Caymanian and not of ("**compulsory**") school age.

Pursuant to the Education Law (2010 Revision) the "compulsory school age" means age commencing on the date next following that upon which a child attains the age of five years before 1st September and ending on the date on which the child attains the age of seventeen years, or has met the requirements to obtain a secondary school diploma or its equivalent, whichever is earlier, or such other age bracket as may be specified by an Order made under section 11...

Based on the foregoing information the Appellant's award of **7 (seven) points** would bring the total to **22 (twenty-two) points under this heading**.

Factor 5 – Community Minded/Integration into the Caymanian Community: 9 (nine) points.

- (I) Two points will be awarded for each year the applicant has provided a minimum of 35 hours of service annually for up to eight years: 0 (zero) points; and
- (II) One and a half (1.5) points will be awarded for each year that the applicant has provided a minimum of 35 hours of service annually for up to eight years: 6 (six) points.

In the refusal letter dated 30 November 2023, the points awarded to Mr. Mendoza increased from 6 (six) points to 9 (nine) points. However, the IAT failed to correctly award points under Factor 5 (II) in compliance with the scoring criteria contained in the Schedule 2 of the Immigration Regulations (2019) Revision and only awarded 1.5 (one point five) points to the Appellant for his contributions as a volunteer to OneSport.Ky. However, the letter dated 28 March 2022 from OneSport.Ky confirms...

*"Since 2020, (*emphasis) Mr. Mendoza has been an active in the basketball community as a Logistics Coordinator, and part of the officiating committee. His countless hours of volunteer work are highly regarded by the coaches and teams. His total hours per month is 30 hours and 360 hours in a year."*

Mr. Mendoza should have been awarded **1.5 points for each year of service for a total of 4.5 (four point five) points. This would have increased his total to 12 (twelve) points in this category.**

Dated the 27th day of December 2023.

ANDERSONS
ANDERSONS

TO: The Clerk of the Court

AND TO: Director of WORC
Workforce Opportunities & Residency Cayman
87 Mary Street
George Town, Grand Cayman
Cayman Islands

AND TO: Chairman
Immigration Appeals Tribunal
Government Administration Building
PO Box 105, 133 Elgin Avenue
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Cayman Islands

AND TO: Attorney General Chambers
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Cayman Islands

This Notice of Originating Motion was issued by ANDERSONS whose address for service is 81 Billy Manderson Drive, West Bay, PO Box 31559, Grand Cayman, Cayman Islands, KY1-1207.