



D COURT OF THE CAYMAN ISLANDS

CAUSE: G OF 2024

ER OF: Section 23(2) of the Immigration (Transition) Act 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 THE IMMIGRATION REGULATIONS (2019 REVISION) SCHEDULE 2

AND: IN THE MATTER OF ORDER 55 RULE 4(2) OF THE GRAND COURT RULES 1995 (REVISED)

BETWEEN: BARRINGTON MARCO BROWN APPELLANT

AND: IMMIGRATION APPEALS TRIBUNAL RESPONDENT

NOTICE OF MOTION

TAKENOTICE 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 of this Honourable Court, to file this Appeal Out of Time and an Order setting aside the Decisions of the Respondent and that the Appellant therefore be afforded the opportunity, to access his legal rights, particularly on account of the fact that he continues to challenge the decision of the Respondent, for endorsing the refusal of his application for Permanent Residency in the Cayman Islands, as well as the Respondent failing to consider all of the evidence submitted to the Respondent; in support of his appeal against the refusal of his application for Permanent Residence. A copy of this decision is produced as **Exhibit "BB1"**

BACKGROUND

1. The Appellant appealed this decision on the grounds that it was unreasonable, erroneous, contrary to the principles of natural justice and at variance with the regulations; by way of a Letter dated April 5 2022.
2. The Appellant was told by an agent of the Respondent, that he had been asked to provide any change in his circumstances and to provide any additional information since lodging his appeal, particularly under the headings of **Factor 2B Education** and **Factor 5 Community Involvement**, and these documents were submitted via email attachment. The Appellant produces a copy of the email as **Exhibit "BB1"** to include copies of the actual documents that were requested.

3. The Appellant had received no further communication from the Respondent, and as a consequence, personally attended at the offices of the Respondent on Thursday May 9 2024, as the renewal of his Permission to Continue Work was due for renewal.
4. It was upon the Appellant's attendance at this office that he was advised by the female agent of that office that several emails had been sent out to the Appellant and he did not respond. Even more troubling and confusing, was the declaration made by the said agent, that his Appeal had been dismissed since May 26 of 2023, and the Appellant had no communication to this effect, and to compound matters, had been granted a further Permission to Continue Work facility in November of 2023.
5. Because a renewal application for the Appellant's PCW had been submitted on April 17th 2024 and the application was refused on May 2 2024, was the reason that the Appellant went to WORC department; to find out the details of why it had been refused. It was then that the Appellant was told that his PR Application had been refused since May 26 2023.
6. It was after reading the letter that the Appellant discovered, that the refusal had been since May 26 2023. The agent at the Respondent's office then checked the records and showed the Appellant that, an email was sent; including the letter. The Appellant then requested a copy of the email sent there and then, and it was at that that specific time, that after checking the email the agent had just then purportedly sent, that they both observed that, it was sent to the wrong email address, as the address the agent used was [barringtonbrown92](mailto:barringtonbrown92@gmail.com) instead of barringtonbrown92@gmail.com.
7. It was then that the Appellant was for the first time handed a copy of a letter from the Respondent, dated May 26 2023, which letter advised that his **"...appeal is unanimously dismissed... Should further appeal be desired, the Appellant may appeal to the Grand Court...on a point of law only...such appeal must be filed within twenty eight (28) calendar days of receipt of the decision against which the appeal is brought"**...
8. The Appellant respectfully, submits that this **"twenty eight calendar days"**, as per the principles of natural justice, should only commence running from May 9 2024, which was the date upon which he was first made aware of the decision, that his appeal had been dismissed as per **"...The Tribunal determined that no grounds had been made, in assessing the information that was before the Director of WORC the decision to refuse the grant of permanent residence was not unreasonable, erroneous, contrary to the principles of natural justice or at variance with the regulations"**... Respectfully, the Appellant submits that the Respondent has therefore, failed to take into account all of the evidence by which I would have acquired points; to qualify for the grant of his application.
9. 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 principles of natural justice in all the circumstances, in that ultimately and to the detriment of the Appellant, the conduct of the Respondent culminated in a lack of communication which for all intents and purposes has operated in a manner adverse to the interests of the Appellant the Appellant, and as is recommended by the court 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..." **...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. ... 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 was never advised, nor indeed was served notice of any of the "requirements" on the basis of which the Respondent came to conclude that the Appellant's Appeal should be dismissed.

- 10. It has also been 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, as being also "unreasonable" in all the circumstances.
- 11. As well, 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"...
- 12. **AS SUCH** the Appellant is therefore respectfully seeking an Order of this Honourable Court, to file this Appeal Out of Time and that the Appellant be afforded the opportunity, to access his legal rights, particularly on account of the fact that he continues to challenge the decision of the Respondent, for endorsing the refusal of his application for Permanent Residency in the Cayman Islands, as well as failing to consider all of the evidence submitted to the Respondent; in support of his appeal against the refusal of his application for Permanent Residence, and petition this Honourable Court, to have the Respondent's several decisions set aside; and that the Appellant be afforded the grant of the right to permanently reside in the Cayman Islands and 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.

DENNIS BRADY ATTORNEY (for the Appellant)

Dated the 17 day of May 2024

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 ON BEHALF OF THE APPELLANT WHOSE ADDRESS FOR SERVICE IS THAT OF HIS SAID ATTORNEYS SECOND FLOOR ANDERSON SQUARE, GEORGETOWN, GRAND CAYMAN KY1-10092