



COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2024

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 OF THE IMMIGRATION (TRANSITION) ACT (2022 REVISION).

RICHARD ROBERT HAUGHTON

Appellant

-v-

IMMIGRATION APPEALS TRIBUNAL

1<sup>st</sup> Respondent

AND

CAYMAN STATUS & PERMANENT RESIDENCY BOARD

2<sup>nd</sup> Respondent

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**NOTICE OF  
ORIGINATING MOTION**

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**TAKE NOTICE** that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on the \_\_\_\_\_ day of \_\_\_\_\_ 2024 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:

- i. The decision of the 1<sup>st</sup> Respondent dated 20 June 2024 was unreasonable and not in accordance with the Law. Therefore, the matter should be remitted to the 1<sup>st</sup> Respondent to be reconsidered and decided according to the Law; and / or

- ii. The decision of the 1<sup>st</sup> Respondent dated 20 June 2024 to refuse to grant the Appellant's appeal from the decision of the 2<sup>nd</sup> Respondent is unreasonable / amounts to a breach of natural justice and therefore the matter be remitted to the 1<sup>st</sup> respondent to reconsider their decision and reach a decision in accordance with the Law and Natural Justice.
- iii. A declaration that the 1<sup>st</sup> Respondent can and should rely on evidence of both the liquid asset investment and the hard asset investment as proof of total investment in a local solvent company.
- iv. A published declaration by the 1<sup>st</sup> Respondent what their policy is and what their expectations are in regard to proof of total local investment and confirmation that this policy is in accordance with the position of the Cayman Status and Permanent Residency Board and the Director of WORC.
- v. A declaration that the 1<sup>st</sup> Respondent and any decision maker, when considering the application for Permanent Residence can consider an applicant's right to family life and private life pursuant to Section 9 of the Bill Of rights when considering whether not to grant or reject an application for Permanent Residence; or
- vi. Section 37(3) of the Immigration (Transition) Act 2021 is incompatible with Section 9 of the Bill of Rights.

And for an order that the costs, of and incidental, to this Application be paid by the 1<sup>st</sup> Respondent.

**AND FURTHER TAKE NOTICE** that the grounds of this application are:

1. The Appellant has resided in the Cayman Islands since 2013. The Appellant currently lives with his wife in George Town, Grand Cayman.
2. The Appellant is a 48-year-old Jamaican national, who, when he applied for Permanent Residence and a Residency and Employment Rights Certificate ("RERC") pursuant to Section 37(1) of the Immigration (Transition) Act (2022 Revision), was 46 years old.

3. At the time of the Appellant's application, Factor 3 of Schedule 2 in the Immigration Regulations (2019 Revision) was used to assess the total local investment in a local company. Total investment was defined as –
  - Investment in a privately owned locally licensed small business which is solvent.
4. In the decision dated 10 August 2023, the 2<sup>nd</sup> Respondent rejected the Appellant's application. The Appellant was notified that:
  - In considering an application for permanent residence under subsection (1), the Director of WORC upon applying the criteria set out in the points system shall grant permanent residence to all applicants attaining one hundred and ten points or more. In this particular case, the total score attained is 89.00 points.
  - Total Score Tabulation: 89.00
5. Subsequently a notice of appeal was submitted against the decision on behalf of the Appellant.
6. On the 4 December 2023, WORC provided the Appellant with an Appeal Bundle. This Bundle contained the Appellant's original application and a number of supporting documents.
7. It was noticeable that the 2<sup>nd</sup> Respondent made no reference of considering the Appellant's Constitutional Rights / Human Rights, in particular his right to a family and private life as per Section 9 of the Bill of Right ("BOR"), nor of any reasoning for its decision in Factor 3.
8. Grounds of Appeal were submitted on the 12 February 2024 and on 17 April 2024 the 1<sup>st</sup> Respondent concluded that the decision of the Director of WORC was not unreasonable, erroneous, contrary to the principles of natural justice or at variance with the Regulations.
9. It was noticeable that the 1<sup>st</sup> Respondent applied criteria that the 2<sup>nd</sup> Respondent had not in making its decision and was not part of the required documents listed on the application form (see para. 16 below). It held as follows –

- **Factor 3 – Local Investments –**

- Splash Pools Cayman letter dated May 2022 issued by Erno G. Virag and Delsie Russell indicate that "... hereby confirm receiving \$61,912.28, Sixty-One Thousand Nine Hundred Dollars and Twenty-Eight Cents as total investment ..." however, this liquid asset investment contradicts the hard assets investment in an itemized listing of inventory – assets value detailed for Splash Pools which was provided;
  - No proof of the Appellant's monetary investment by way of bank statements being reflected in either the Appellant's or the local licensed company's bank statements;
  - No balance sheet prepared by a certified Accountant listing the assets and liabilities of the business has been provided;
  - No evidence of the original shareholder agreement and investments of all shareholders has been provided; and
  - Furthermore, as instructed on WORC/RRW (2020/10) R37 Guidance Notes general requirements for all applicants under Financial Information – Proof of Local Investment(s) all listed documents were not provided.
10. The Appellant subsequently submitted a reconsideration request on the 26 April 2024 and on 20 June 2024, the 1<sup>st</sup> Respondent concluded that –

The Tribunal reviewed the Notice of Appeal received on 30<sup>th</sup> November 2023, the Appeal Statement received on 17<sup>th</sup> January 2024 and the Detailed Grounds of Appeal received on 12<sup>th</sup> February 2024. The Tribunal also considered its decision letter dated 17<sup>th</sup> April 2024.

It was determined that the newly provided submissions were inadequate and not being satisfied the Tribunal found no ground that in its earlier decision dismissing the appeal was erroneous in law, unreasonable, contrary to the principles of natural justice; or at various with the Regulations.

Accordingly, its decision recorded in its letter dated 17<sup>th</sup> April 2024 is upheld and the reconsideration request is unanimously dismissed.

11. In the decision made dated 17 April 2024, the 1<sup>st</sup> Respondent concluded that the Appellant had not scored sufficient points to be granted PR and that it does not have the discretion nor the ability to consider matters outside of the points system. And in its second decision on 20 June 2024, the 1<sup>st</sup> Respondent determined that the Appellant's reconsideration submissions were not satisfactory and inadequate.
12. It is the Appellant's case that the initial decision by the 2<sup>nd</sup> Respondent was flawed and that the subsequent decision by the 1<sup>st</sup> Respondent in upholding the decision not to award him PR, not

only breaches his right to a family life which he has established in the Cayman Islands with his wife, but also his right to a private life. It is averred that this decision is not reasonably justifiable / proportionate in the circumstances and amounts to an error of law.

13. It is also respectfully contended that an applicant should be able to rely on bank card receipts and other evidence of business-related transactions to show his investment(s) in a solvent business. To refuse to acknowledge the same is unreasonable and a breach of natural justice.

#### **Wrong in Law**

14. It is the Appellant's case that, the prior decision of the 2<sup>nd</sup> Respondent and the decision of the 1<sup>st</sup> Respondent, he had established a family and private life in the Cayman Islands.
15. Furthermore, it is the Appellant's case that the decision of the 1<sup>st</sup> Respondent dated 17 April 2024 and 20 June 2024 is wrong in Law / not in accordance with the Law, in that:
- i. The decision of the 1<sup>st</sup> Respondent without reasonable justification breaches the Appellant's right to a family and private life in the Cayman Islands.
  - ii. The 1<sup>st</sup> Respondent failed to carry out its obligation to interpret the Act in a way which is consistent with Section 9 of the BOR.
  - iii. The 1<sup>st</sup> Respondent fettered its discretion and was wrong to reject evidence of the Appellant's total local investment(s) via the documents provided and applied criteria not used in the 2<sup>nd</sup> Respondent's initial decision.
  - iv. The 1<sup>st</sup> Respondent applied for criteria which were not required under Factor 3 of the Regulations.
  - v. The lack of policies in regard to Factor 3 makes the decision arbitrary and opaque.
16. It is the Appellant's contention that both the 1<sup>st</sup> and 2<sup>nd</sup> Respondent are required to consider the Appellant's total local investment which includes both the liquid asset investment and the hard asset investment. Failure to consider the investment(s), despite being provided with documentation showing evidence of the same, renders the decisions erroneous and unlawful.
17. Proof of local investment requires applicants to show –

**Proof of Local Investment(s)**

- a) Proof of shareholding(s): Provide copy of Register of Members (Shareholders) and copy of your share certificate(s) (if any).
- b) Proof of investment of/in shares, e.g., copy of signed relevant shareholders agreement(s) and stating your financial investment contribution to the business. Provide a copy of your cancelled cheque or bank statement (either your bank debiting or the company bank account crediting) evidencing your payment of such investment, unaudited financial statement, statement of assets, etc.
- c) Certificate of Incorporation and/or Trade & Business Licence and information on nature of business.

18. Due to the wide variety of businesses in the Cayman Islands and also the wide variety of ways of investing in business it is contended that the documents listed at b) above are examples and should not be regarded as mandatory. In the current case, the Appellant provided receipts when he used his bank cards and invoices which showed goods and services he purchased for the company as the consideration of his level of investment. If it is the case that the 1<sup>st</sup> Respondent desired that the Appellant produce bank statements, they should have deferred to request the same and not simply refuse his appeal and subsequent reconsideration request.
19. Further, it is also the Appellant's contention that both 1<sup>st</sup> and 2<sup>nd</sup> Respondent are required to consider the Appellant's right to a family and private life in the Cayman Islands pursuant to Section 9 of the BOR when considering whether to grant the Appellant PR. Any failure to consider Section 9 of the BOR (and Article 8 of the ECHR) and apply a reasonably justifiable / proportionality test would render the decisions unlawful. The Appellant avers that the Director and the 1<sup>st</sup> Respondent are required to first consider Factors One to Nine and award points based upon the evidence submitted. In the event that the Appellant does not satisfy the required score, the Director and the 1<sup>st</sup> Respondent are then required to consider whether or not it would be proportionate / reasonably justifiable to interfere with the applicant's Section 9 (and Article 8 of the ECHR) rights.
20. In the event that Section 37(3) of the Act or any of the earlier iterations prevent the 1<sup>st</sup> and 2<sup>nd</sup> Respondent from carrying out a proportionality / reasonably justifiable consideration it is averred that those laws and in particular Section 37(1) and 37(3) of the Act are incompatible with Section 9 of the BOR and therefore the Court are required to make a declaration to that effect.
21. Further and in the alternative, it is the Appellant's case that the decision was unreasonable / amounts to a breach of natural justice in that the 1<sup>st</sup> Respondent:

- i. Failed to ensure that the appeal was fair by failing to ensure policies were in place regarding how to assess total local investment(s).
- ii. Fettered its discretion by rejecting the evidence of investment provided by the Appellant.
- iii. Applied criteria that is not required and which was not considered by the 2<sup>nd</sup> Respondent in the initial decision.

22. It is the Appellant's position that the 2<sup>nd</sup> Respondent is required to:

- i. Provide the Minutes of the meeting in which his application was discussed, points were awarded and subsequently rejected. These minutes are required to be kept as per Section 37(23) of the Act.

23. It is contended that the failure by the Director to provide this document means that he was unable to make any submissions in their regard rendering the appeal hearing unfair and unlawful.

### Conclusion

24. Further to the above, it is averred that the 1<sup>st</sup> Respondent acted erroneously, unlawfully and in breach of natural justice. Accordingly, the decision of the 1<sup>st</sup> Respondent should be set aside so that the Appellant's application can be reheard in accordance with the law.

DATED: 15 July 2024

*Hsm Chambers*

### HSM CHAMBERS

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.