



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO. OF 2024

IN THE MATTER OF S. 23(2) OF THE IMMIGRATION (TRANSITION) ACT (2022 REVISION)

AND IN THE MATTER OF ORDER 55 OF THE GRAND COURT RULES

AND IN THE MATTER OF S. 23 OF THE BILL OF RIGHTS

**AND IN THE MATTER OF AN APPLICATION FOR A RESIDENCY & EMPLOYMENT RIGHTS
CERTIFICATE RPUSUANT TO S. 37 OF THE IMMIGRATION (TRANSITION) ACT (2022 REVISION)**

BETWEEN	JUDITH SIMMONDS	APPELLANT
AND	IMMIGRATION APPEALS TRIBUNAL	RESPONDENT

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on the day of 2024 at am/pm or as soon thereafter as counsel can be heard by counsel on behalf of the Appellant for an order in the following terms:

1. The decision of the Respondent dated 20 June 2024 was unreasonable and not in accordance with the law. Therefore, the matter should be remitted to the Respondent to be reconsidered and decided according to the Law; and/or
2. The decision of the Respondent dated 20 June 2024 to refuse to grant the Appellant Residency and Employment Rights was unreasonable and amounts to a breach of natural

THIS ORIGINATING SUMMONS was issued by Judith Simmonds whose address for service is P.O. Box 23, 1601, Bodden Town, Grand Cayman, Cayman Islands

justice and therefore the matter be remitted to the Respondent to reconsider their decision and reach a decision in accordance with the Law and Natural Justice; or

3. A declaration that the Respondent and any decision maker, when considering the application for Permanent Residence must 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; and/or
4. An order that the costs, of and incidental, to this Application be paid by the Respondent.

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

1. The Appellant has resided in the Cayman Islands since January 2013.
2. The Appellant is a 56-year-old Jamaican national.
3. On 30 March 2023, prior to the decision of the Respondent to reject the Appellant's application for an RERC, the Court of Appeal ("**COA**") of the Cayman Islands declared Section 37(3) of the Act incompatible with Section 9 of the BOR. The decision was subsequently appealed to the Judicial Committee of the Privy Council.
4. In its decision dated 14 March 2024 the Respondent rejected the Applicant's application for an RERC. In its decision the Respondent notified the Appellant 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 80.50 points. • Total Score Tabulation: 80.50"

5. On 19 April 2024 the Appellant submitted a reconsideration application to the Respondent and on 20 June 2024 the Respondent dismissed the Appellant's reconsideration application upholding its decision on 14 March 2024.
6. It was noticeable that the Respondent made no reference to the implications of the declaration of incompatibility made by the COA, nor was there any reference or seemingly any consideration made to "staying" the appeal pending the decision of the Privy Council.
7. Grounds of Appeal were submitted on 21 July 2023. The Appellant sought to overturn the decision of the Director on the basis that the decision was:

- 7.1. unreasonable; and

7.2. erroneous in Law.

8. In its decision dated 14 March 2024 and upheld in its decision dated 20 June 2024, the Respondent rejected the Appellant's application for an RERC. This is despite the decision of the COA and pending appeal. In its unanimous decision the Respondent notified the Appellant that:

"In considering an application/or permanent residence under subsection (1), the Board or the Director of WORC upon applying the criteria set out in the points system shall only grant permanent residence to all applications attaining one hundred and ten points or more"; read with Part 1, section 9 (3) of the Cayman Islands Constitution. Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society"

9. It is the Appellant's case that the decision not to grant the Appeal not only breaches her right to a family life, which she has established in the Cayman Islands, but also her right to a private life. It is averred that this decision is not reasonably justifiable, or proportionate in the circumstances.

Wrong in Law

10. It is the Appellant's case that, prior to the decision of the Respondent, she had established a right to family and private life in the Cayman Islands.
11. Furthermore, it is the Appellant's case that the decision of the Respondent dated 20 June 2024 is wrong in Law and/or not in accordance with the Law, in that:
- 11.1. the decision of the Respondent failed to conclude that the decision of the Director was contrary to Section 9 of the BOR and therefore amounted to an error of Law.
- 11.2. the decision of the Respondent in failing to conclude that the failure of the Director to stay the decision in the Appellant's case, pending the decision of the Privy Council, was unreasonable.
12. It is the Appellant's contention that the Respondent is required to consider the Appellant's right to a family and private life in the Cayman Islands pursuant to Section 9 of the BOR. The failure to consider such rights and/or defer or stay the application would amount to a breach of Section 9.
13. While it is accepted that an RERC cannot be granted "outside" of Section 37 (3) of the Act, an applicant's Section 9 BOR rights are a fundamental consideration when considering to

conclude the application, especially in light of the COA's declaration of incompatibility. In effect, following the declaration of incompatibility, the Director should have proceeded as follows:

- 13.1. reviewed the Appellant's application pursuant to the points system.
 - 13.2. upon concluding that the Appellant did not achieve 110 points, consider whether or not the Appellant had a Section 9 BOR right.
 - 13.3. if the Director concluded that the Appellant had not established a Section 9 BOR right, reject the application.
 - 13.4. if the Director concluded that the Appellant established a Section 9 BOR right, then he should have notified the Appellant that her application was deferred pending the decision of the Privy Council.
14. It is the Appellant's contention that because the Director failed to carry out a process similar to the above and the Respondent upheld the Director's decision, the Respondent acted unreasonably/erred in Law. Furthermore, because the Respondent did not accept the submission as set out in the Grounds of Appeal, they have also erred in Law.
15. Further it is averred that the Respondent erred in law when it concluded that:
- "The Tribunal determined that it must apply the points system as prescribed in the primary legislations (Immigration (Transition) Act and Schedule 2 of the Immigration Regulations) and that it does not have discretion or the ability to consider Section 9 of the Cayman Islands Constitution Order to weigh various factor separately.*
- The Tribunal noted the arguments regarding the incompatibility of the points system and the Bill of Rights cannot be determined by the Tribunal. Therefore, the Tribunal determine, having considered the legislations, that it does not have the power to engage consideration of Section 9 of the Bill of Rights in this matter".*
16. The Appellant would contend that when the Respondent reviews the decision of the Director and applies the test of anxious scrutiny, especially when considering the procedure followed by the Director, any Section 9 BOR rights of the applicant are relevant and needs to be considered.

Unreasonable

17. Further and in the alternative, it is the Appellant's case that the decision of the Respondent was unreasonable and/or amounts to a breach of natural justice in that the Respondent:
 - 17.1. failed to ensure that the process of applying for and obtaining an RERC post the decision of the COA was a fair process for those individuals who had a Section 9 BOR Right.
 - 17.2. failed to create policies for when to defer an RERC application when it was clear the individual had an established Section 9 BOR right.
18. By the Respondent failing to seemingly identify or deal with the above issues the decision of the Respondent is unreasonable. It should have been abundantly clear to the Respondent, following the decision in the case of *Buray & D'Souza*, that no individual's PR application should be rejected when they had an arguable Section 9 Right.
19. The Court of Appeal of the Cayman Islands ruled that Section 37(3) of the Act was incompatible with Section 9 of the BOR and therefore, subject to the decision of the Privy Council, the Act would have to be amended to potentially incorporate a BOR consideration. Therefore, on this basis, a policy should have been devised so that in circumstances where an applicant for PR had established a prima facie Section 9 BOR right, but had not obtained 110 points, the application could have been deferred pending the decision in *Buray & D'Souza* and any change in the Law.
20. As such, it is contended that the Respondent should have considered the Appellant's human rights and the COA decision and stayed the application to await the decision of the Privy Council and the potential amendments to the law. Having failed to stay its decision and thus rejecting the appeal, the Respondent has acted unreasonably, thus rendering its decision unlawful.

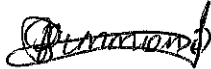
Breach of Natural Justice

21. Lastly, it is averred that the decisions of the Respondent are a breach of natural justice due to the brevity of the decision. It appears that the Respondent has failed to identify the issues raised in the Grounds of Appeal and certainly have not addressed them in its decision. It is contended that the brevity of the decision falls foul of the guidance in the case of *National Roads Authority v Bodden et Ors* [2014] 2 CILR 47 as there is a substantial doubt as to whether they have understood the issues.

Conclusion

Further to the above, it is averred that the Respondent acted erroneously, unlawfully and in breach of natural justice. Accordingly, the decision of the Respondent should be set aside so that the Appellant's application can be reheard in accordance with the Act.

DATED the 18th of July 2024



JUDITH SIMMONDS
APPLICANT

96 Peseta Drive
Bodden Town
P.O. Box 1691 GT

Phone # 922-3712

Email - Judithsimmonds345@gmail.com