



IN THE GRAND 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).

SUSAN ANN ROBINSON

Appellant

-V-

IMMIGRATION APPEALS TRIBUNAL

1<sup>st</sup> Respondent

AND

CAYMAN STATUS AND 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 26 July 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 26 July 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; or
- iii. A declaration that the 1<sup>st</sup> Respondent and any decision maker, when considering the application for the continuance of dependency of Permanent Residence pursuant to Section 37 (18) of the Act or when considering on revoking a dependency pursuant to Section 37 (18) of the Act, must consider an applicant's right to family life and private life pursuant to 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 2010. The Appellant currently lives in West Bay, Grand Cayman.
2. The Appellant is a 47-year-old British national, who, when she applied for Permanent Residence ("PR") pursuant to Section 37(18) of the Immigration (Transition) Act (2019 Revision) ("the Act"), was 45 years old. The Appellant's application was submitted on 26 January 2022.
3. The Appellant is the dependent and surviving spouse of PR holder Paul Robinson who passed away on 30 October 2021.
4. On the 26 January 2022, the Appellant applied for PR as the surviving spouse to a PR holder, pursuant to Section 37(18). The application was submitted via an R-37(18) form (previously known as the R-30 Form), as directed previously by the then Secretary to the Board. It was noticeable

that the Form was not designed for a points system and that the direction the Appellant obtain 110 points was incorrect and was subject to further reviews and reissues.

5. Subsequent to the application, further discussions with WORC took place with HSM Chambers corresponding with the 2<sup>nd</sup> Respondent on the 20 June 2022, advising it that it had a discretion not to revoke the Appellant's PR dependency.
6. However, in its decision dated 22 August 2023, the 2<sup>nd</sup> Respondent rescinded the Appellant's Dependent Status and subsequently rejected the Appellant's application for an RERC on 25 August 2023. This is despite, not only the decision of the COA on 30 March 2023 and the pending appeal relating to an applicant's Section 9 BOR rights and the incompatibility of Section 37 of the Immigration (Transition) Act (2022 Revision), but also the discretion given to it under Section 37(18).
7. In the letter of dated 22 August 2023, the Appellant was notified that:

I am directed to advise you that your application was heard at a previous meeting of the Caymanian Status and Permanent Residency Board and the application was reviewed:-

- The Board noted that the Permanent Residency Holder, Paul Robinson, is now deceased since April 2021. Therefore, dependant spouse, Susan Robinson, ceased to be a dependant of a Permanent Residency Holder.
- Please note all references to the Immigration Law (2015 Revision), Immigration (Transition) Law 2018 and/or Immigration (Transition) Act (2021 Revision), and the varying sections are now replaced by the Immigration (Transition) Act (2022 Revision), and the varying sections.

8. The Appellant submitted a notice of appeal against the decision of the 2<sup>nd</sup> Respondent as it is contended that the 2<sup>nd</sup> Respondent fettered its discretion and wholly misunderstood Section 37(18) by what appears to be the interpretation and application of the section in the same manner as to that of a death pursuant to Section 40, whereby the Board must revoke an RERC.
9. On the 7 November 2023, WORC provided the Appellant with an Appeal Bundle. This Bundle contained the Appellant's original application and a number of documents. In the Appeal Statement the 2<sup>nd</sup> Respondent stated that –

In this particular case, the Board reviewed the matter in light of the Appellant's spouse's death and determined that on that basis, the Appellant was no longer a dependant on her spouse's RERC.

10. It was noticeable that the 2<sup>nd</sup> Respondent made no reference to considering the Appellant's Constitutional Rights / Human Rights nor any reference that they considered the discretion given to them by Section 37(18) and as such, made an error of law.
11. Grounds of Appeal were submitted on the 15 December 2023. The Appellant sought to overturn the decision of the 2<sup>nd</sup> Respondent on the basis that the decision was:
  - Unreasonable.
  - Wrong in Law.
  - Contrary to the Regulations.

12. On 6 August 2024 the 1<sup>st</sup> Respondent concluded that –

The above synopsis applies equally to the Appellant. Therefore, the Tribunal determined having considered the legislations and case law that it does not have the power to engage consideration of section 9 of the Bill of Rights in this matter.

The Tribunal determined that no grounds had been made, as the Appellant ceased to be a dependant of a Permanent Residency Holder upon the death of the late Mr. Paul Robinson.

13. It is the Appellant's case that the decision not to grant the Appeal breaches her right to a family and private life, which she had established in the Cayman Islands. It is averred that this decision is not reasonably justifiable / proportionate in the circumstances.

#### **Wrong in Law**

14. It is the Appellant's case that, prior to the decision of the 2<sup>nd</sup> Respondent and the decision of the 1<sup>st</sup> Respondent, she had established a family and private life in the Cayman Islands. At the date

of decision to revoke the Appellant's dependency, she was settled in the Cayman Islands and was a Permanent Resident.

15. Furthermore, it is the Appellant's case that the decision of the 1<sup>st</sup> Respondent dated 26 July 2024 is wrong in Law / not in accordance with the Law, in that:
  - i. The decision of the 1<sup>st</sup> Respondent failed to conclude that the decision of the 2<sup>nd</sup> Respondent was contrary to Section 9 of the BOR and therefore amounted to an error of Law.
  - ii. The decision of the 1<sup>st</sup> Respondent in failing to conclude that the failure of the 2<sup>nd</sup> Respondent to exercise its discretion not to revoke the dependency status in the Appellant's case, was unreasonable.
  
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 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.
  
17. While it is accepted that an RERC may be revoked pursuant to Section 37(18) of the Act, an Applicant's Section 9 BOR rights are a fundamental consideration when considering whether to action the same, especially in light of the COA's declaration of incompatibility of Section 37(3). In effect, following the declaration of incompatibility, the 2<sup>nd</sup> Respondent should have proceeded as follows:
  - i. Reviewed the Appellant's application pursuant to 37(18) of the Act.
  - ii. Upon concluding that the Appellant's spouse was deceased as the main holder of PR, consider whether or not the Appellant had a Section 9 BOR right.
  - iii. If the 2<sup>nd</sup> Respondent concluded that the Appellant had not established a Section 9 BOR right, reject the application.

- iv. If the 2<sup>nd</sup> Respondent concluded that the Appellant established a Section 9 BOR right, the decision maker should then have considered a proportionality assessment when considering whether it was reasonably justifiable to revoke the Appellant's status.
18. It is the Appellant's contention that because the 2<sup>nd</sup> Respondent failed to carry out a process similar to the above, it acted unreasonably / erred in Law. Furthermore, because the 1<sup>st</sup> Respondent did not accept the submissions as set out in the Grounds of Appeal, they have also erred in Law.
19. Further, it is averred that the 1<sup>st</sup> Respondent erred in law when it concluded that;
- The Tribunal considered the Appellant's Rights under section 9 of the Cayman Islands Constitution Order as read with the Immigration (Transition) Act. section 38 (3) of the Immigration (Transition) Act, *"In considering an application for 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"* – subsection (e) *"to regulate the right to enter or remain in the Cayman Islands"* and Part 1, section 24 *"It is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights unless the public official is required or authorised to do so by primary legislation..."*. 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 the discretion or the ability to consider section 9 of the Cayman Islands Constitution Order to weigh various factors separately.
20. The Appellant would contend firstly that the 1<sup>st</sup> Respondent has applied the incorrect section in its decision making. Secondly, that when the 1<sup>st</sup> Respondent reviews the decision of the 2<sup>nd</sup> Respondent and applies the test of anxious scrutiny, especially when considering the procedure followed by the 2<sup>nd</sup> Respondent, any Section 9 BOR rights of the applicant are relevant and need to be considered. By failing to consider these Rights, the 1<sup>st</sup> Respondent erred in Law.

### Unreasonable

21. Further and in the alternative, it is the Appellant's case that the decision of the 1<sup>st</sup> Respondent was unreasonable / amounts to a breach of natural justice in that the 2<sup>nd</sup> Respondent -

- i. Failed to ensure that the process of applying for and allowing the retention of a dependency on an RERC, post the decision of the COA, was a fair process for those individuals who had a Section 9 BOR Right.
  - ii. Failed to create policies for when to allow a surviving spouse to retain their dependency when a PR holder becomes deceased and when to defer an RERC application when it was clear the individual had an established Section 9 BOR right.
22. By the 1<sup>st</sup> Respondent failing to seemingly identify or deal with the above issues the decision of the 1<sup>st</sup> Respondent is unreasonable. It should have been abundantly clear to the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> 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. 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 or seemingly had failed to satisfy the Board under Section 37(18), the application could have been deferred pending the decision in *Buray & D'Souza* and any potential changes in the Law.
23. As such, it is contended that the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent should have considered the Appellant's human rights, her ability to reside in the Islands whilst retaining her PR Dependency 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 1<sup>st</sup> Respondent has acted unreasonably, thus rendering its decision unlawful.

#### **Breach of Natural Justice**

24. Lastly, it is averred that the decisions of the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent are a breach of natural justice due to the brevity of the decision. It appears that the 1<sup>st</sup> Respondent has failed

to identify the issues raised in the Grounds of Appeal and certainly has not addressed them in their 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

25. 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: 22 August 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.