



D COURT OF THE CAYMAN ISLANDS
- FROM THE IMMIGRATION APPEALS TRIBUNAL
ER OF GCR ORDER 55

Cause No:

ALLISON RENE MANNING

Appellant

-and-

THE DIRECTOR OF WORC

Respondent

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, by counsel on behalf of Allison Rene Manning on the following grounds:

1. By a letter dated the 14th July 2025 ("**the Decision Letter**"), the Immigration Appeals Tribunal ("**the IAT**") unanimously dismissed Ms Manning's appeal against the decision of the Respondent Director of WORC ("**the Director**"). The Director's decision, dated the 29th August 2024, was to refuse Ms Manning's application for a Residency and Employment Rights Certificate ("**permanent residence**") under section 37 of the Immigration (Transition) Act (2022 Revision) ("**the Act**").
2. The Director took a single issue with Ms Manning's application, namely that she did not meet the "*legal and ordinary resident*" test under the Act because she was a "*tourist visitor*". The Director found that Ms Manning had become a tourist visitor after the cancellation of her work permit on or around the 30th March 2020 until she was granted a further work permit on the 10th February 2022.
3. The Director did not find that Ms Manning failed to meet the "*legal and ordinary resident*" test on any other ground (nor did the IAT). Neither the Director nor the IAT

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identified any other ground upon which Ms Manning would fail the permanent residence test.

4. Ms Manning appeals against the IAT's decision on the following grounds, in summary:

GROUND 1 – IAT MADE AN ERROR OF LAW REGARDING THE LEGAL AND ORDINARY RESIDENCE TEST

5. The IAT erred in law when it upheld the Director's decision that Ms Manning did not meet the requirement of legal and ordinary residence because she had become a tourist visitor during the relevant period. Ms Manning was not a "tourist visitor" as a matter of law. She was legally and ordinarily resident.
6. Under section 37(1) of the Act, any person who "*is legally and ordinarily resident in the Islands for a period of at least eight years*" may apply for permanent residence, apart from those in categories (a)-(f), which did not apply to Ms Manning.
7. Section 2 of the Act defines "*legal and ordinary residence*" as follows:

"a person's uninterrupted voluntary physical presence in the Islands for a period of time without legal impediment (other than a tourist visitor or transit passenger) during which period the Islands are regarded as that person's normal place of abode for the time being, except that —

(a) absences abroad of six consecutive months' duration or less for, inter alia, purposes of education, health, vacation or business during such period shall count as residence in the Islands;

(b) absences abroad of more than six consecutive months but less than one year shall raise the presumption that there has been a break in residence; and

(c) absences abroad for twelve consecutive months or more shall constitute a break in residence"

8. Section 2 of the Act defines “*tourist visitor*” as “*a person arriving in the Islands for a visit of not more than six months’ duration otherwise than for a professional, financial trade or business purpose or for the purpose of seeking or engaging in employment.*”
9. Ms Manning was not a “tourist visitor” according to this definition:
 - i. She did not “*arrive*” in the jurisdiction after the cancellation of her work permit on the 30th March 2020. She had arrived on the 29th September 2019 while subject to a work permit. She remained in the jurisdiction until the 13th April 2022, when she departed while subject to a work permit. In the absence of any qualifying arrival, Ms Manning did not meet the definition of “*tourist visitor*”.
 - ii. For the same reasons, she did not arrive “*for a visit of not more than six months’ duration*”. Her arrival on the 29th September 2019 was for the purpose of work, rather than a visit. She remained in the jurisdiction until the 13th April 2022, some 30 months.
 - iii. Ms Manning was not in the jurisdiction for tourism purposes. Conversely, she fell into the category of “*professional, financial, trade or business purpose or for the purpose of seeking or engaging in employment*”. She would in all likelihood have remained in work had the pandemic not take place (see below).
10. Accordingly, she met the test for legal and ordinary residence because she was not a tourist visitor during the relevant period. She did not meet the statutory definition of “*tourist visitor*”. The IAT should have overturned the Director’s decision on that basis.

GROUND 2 – DIRECTOR’S DECISION WAS UNREASONABLE AND DISPROPORTIONATE

11. Further or alternatively, the IAT erred in law by upholding the Director’s Decision in circumstances where it was not rational or proportionate. The Director was required to act reasonably and proportionately as a matter of common law and under section 19(1) of Schedule 2, Part 1 of the Cayman Islands Constitution Order (2009 No. 1379) (“**the Bill of Rights**”). The IAT should have accepted Ms Manning’s submission that the Director had acted unreasonably in deciding that she did not meet the test of legal and ordinary residence under the Act.

12. Section 52 of the Act states:

“In relation to the qualification for legal and ordinary residence referred to in this Part —

(a) where any question arises as to whether a person was or was not, during any material period, legally and ordinarily resident in the Islands, such questions shall be decided by the Board or the Director of WORC [...].”

13. The IAT should have held that, had the Director approached the question rationally and proportionately, he/she would have found that Ms Manning met the test. This is for the following reasons (in summary, without prejudice to further reasons given in due course):

- i. It was clearly obvious that Ms Manning’s work permit with Kai One Ltd (a restaurant business) was cancelled as a consequence of the COVID-19 pandemic. This was explicitly acknowledged by the Director and the IAT in their decisions. Both record that the work permit was cancelled on the 30th March 2020. This was very soon after the government announced that the airport would close, that all non-essential workers must remain at home, and that a curfew would be imposed.
- ii. It was similarly obvious that there were extremely limited work opportunities for hospitality and restaurant workers thereafter and throughout the pandemic.
- iii. Despite losing her job, Ms Manning remained living in the Cayman Islands with her Caymanian son and Caymanian partner. She maintained her abode and continued to develop her family life. Her general living situation did not change. It remained the same as it had done throughout the period that she had been subject to a work permit (i.e. from around October 2015).
- iv. The IAT and Director should have been fully aware of her family and living situation because it was stated clearly in her 15th February 2024 permanent residence application: *“The Applicant considers the Cayman Islands her home and has integrated well into the local community. She has a personal stake, as a mother to*

a young Caymanian son, in advancing the Cayman community. [...] The Applicant is a wonderful mother to a Caymanian son [...]".

- v. Ms Manning made no attempt to move from the jurisdiction during this period because the Cayman Islands was her long-term home. She did not leave the jurisdiction at all between the 29th September 2019 and the 13th April 2022.
- vi. The grant of her new work permit in February 2022 coincided with the reopening of the Cayman Islands following the pandemic and the consequent increase in employment opportunities. In particular, on or around the 2nd February 2022 the requirement for quarantine was removed for vaccinated travellers. This further demonstrates how the loss of her work permit was due to the pandemic only.

14. In light of the above, no reasonable or proportionate decision maker would conclude that Ms Manning was in the jurisdiction as a “*tourist visitor*” or for “Genuine Touristic Purposes”. The only rational explanation for Ms Manning not continuing to be subject to a work permit was the advent of the pandemic which prevented her from finding employment. The IAT (and Director) failed to have appropriate regard to these matters. Even if she had been labelled a “tourist” at the time (which is denied), this would have been as a result of bureaucratic necessity due to the unavailability of any alternative means of categorising persons in her situation.

15. The fact that the matters above were obvious is reflected in the actual approach of WORC to Ms Manning’s post-February 2022 work permits and permanent residence application (in summary, without prejudice to further reasons given in due course):

- i. Ms Manning was granted approximately five work permits after February 2022. All of those work permits stated her term limit to be the 9th October 2024. This demonstrated that WORC considered her to have been legally and ordinarily resident throughout the relevant period.
- ii. Ms Manning’s permanent residence application was not rejected at the point of submission due to any issue with her term limit. If she had not been legally and ordinarily resident, then she would not have been entitled to apply by virtue of section 37(1). Her application would have been rejected summarily.
- iii. Conversely, WORC accepted her application and processed it.

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- iv. Further, WORC permitted Ms Manning to sit the required History and Culture test.
- v. Even the Director's Appeal Statement notes Ms Manning as being "*Legally and Ordinarily Resident since: 2015*".

16. Further, when deciding whether Ms Manning had been legally and ordinarily resident, the Director should have taken into account the matters raised as part of her permanent residence application that demonstrated her residence. This included (but is not limited to) her work experience in the Cayman Islands (since 2015), her financial history with a Cayman Islands bank (since 2017), her integration into the community and the fact that she had a Caymanian son.

17. The Director should have considered all of the above matters when deciding whether Ms Manning had legal and ordinary residence. He failed to do so. Accordingly, the IAT should have allowed the appeal on the basis that the Director made an unreasonable and/or disproportionate decision.

GROUND 3 – BREACH OF PROCEDURAL FAIRNESS

18. Further or alternatively, the IAT erred in rejecting (or failing to consider) Ms Manning's submission that the Director made the decision in breach of the requirement of procedural fairness under section 19(1) of the Bill of Rights.

19. A reasonable decision maker faced with the question of whether Ms Manning met the legal and ordinary residence test would have, when exercising his/her power under section 52, made further enquiries as to her situation before making a decision. On the face of the Decision Letter and the Director's Decision, the Director merely reviewed Ms Manning's work permit history in the WORC database when making the decision. This was plainly insufficient.

20. In those circumstances, a reasonable decision maker was bound to make further enquiries of Ms Manning to ascertain the full situation in order to make an informed decision (see e.g. *R (Costello) v Nottingham City Council* (1989) 21 HLR 301 at p.309). That enquiry would have also allowed Ms Manning to make further representations about her position, in accordance with procedural fairness.

21. To the extent that the Director was unaware of the matters summarised above in Ground 2, he/she should have made enquiries. Failure to do so was an error of law that should have been overturned by the IAT. If the Director had been aware of the matters summarised in Ground 2, then his decision was unreasonable for the reasons set out in Ground 2.

GROUND 4 – BREACH OF LEGITIMATE EXPECTATION

22. The IAT erred in rejecting (or failing to consider) Ms Manning's submission that the Director's decision breached her legitimate expectation that her term limit had not been interrupted while she was not subject to a work permit.
23. WORC treated Ms Manning as having a term limit of the 9th October 2024, which necessarily involved treating her as not having broken her legal and ordinary residence period (because otherwise the term limit would have been altered). Paragraph 15 above is repeated.
24. In reliance on this legitimate expectation, Ms Manning remained in the Cayman Islands and made an application for permanent residence (which in itself caused her to spend a very substantial amount of time and expense). She developed her family life in the Cayman Islands based on the legitimate expectation.
25. In all the circumstances, it was unfair of the Director to reject Ms Manning's permanent residence application, thereby frustrating her legitimate expectation.
26. The IAT should have upheld Ms Manning's submission and overturned the Director's decision.

GROUND 5 – FAILED TO APPLY SECTION 9 OF THE BILL OF RIGHTS TO THE LEGAL AND ORDINARY RESIDENCE TEST

27. The IAT erred in law when it held 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 the

discretion or the ability to consider Section 9 of the Cayman Islands Constitution Order to weigh various factors separately. [...] Therefore, the Tribunal determined, 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.”

28. The IAT should have overturned the Director’s decision because the Director did not take proper account of Ms Manning’s rights under section 9 of the Bill of Rights (and those of her family) when considering whether she met the legal and ordinary residence test for the purposes of, *inter alia*, sections 2 and 52 of the Act.

29. The question of whether an individual is legally and ordinarily resident is distinct from the requirement to apply the points system to an application. The former is a requirement under section 37(1). It does not form part of the points system assessment under section 37(2). It is not a factor that is considered when awarding points because it is a prerequisite to making an application in the first place.

30. Accordingly, it was necessary for the Director to take into account Ms Manning’s section 9 rights when considering whether she was legally and ordinarily resident under sections 2 and 52 (pursuant to section 24 of the Bill of Rights and common law). The Director failed to place any, or any adequate, weight on Ms Manning’s family life when making its decision. Paragraphs 13(iii)-(v) above are repeated.

31. The IAT erred in law in its approach because it conflated the legal and ordinary residence test with the points test. It should have upheld Ms Manning’s submission in relation to her section 9 rights and overturned the Director’s decision.

AND for the following relief:

1. An order quashing the IAT’s decision.
2. An order quashing the Director’s decision.
3. An order that Ms Manning’s permanent residence application be granted.
4. Alternatively, remittal of the matter to the Director to make a fresh decision.

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5. Costs here and before the IAT.

Dated this 8th day of August 2025

Filed this day of August 2025

A handwritten signature in black ink, consisting of the letters 'KSG' in a stylized, cursive font.

KSG Attorneys

TO: The Clerk of Court

AND TO: The Director of WORC

AND TO: The Immigration Appeals Tribunal