



D COURT OF THE CAYMAN ISLANDS
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CAUSE: G OF 2025

ER OF SECTION 37(1) (3) OF THE IMMIGRATION (TRANSITION) ACT (2021 REVISION)

AND: IN THE MATTER OF A DISMISSAL OF AN APPEAL AGAINST THE DECISION BY THE
IMMIGRATION APPEALS TRIBUNAL SECTION 21(8) (b) OF THE IMMIGRATION (TRANSITION) ACT
(2022 REVISION)

AND: IN THE MATTER OF: SECTION 24 OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009

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: MARK ANTHONY ROBINSON APPELLANT

AND: IMMIGRATION APPEALS TRIBUNAL 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 for **THE APPELLANT** for the
following relief namely :-

1. An Order setting aside the Decisions of the **Respondent**, as relates to the refusal, of the grant of the right to be granted a Residency and Employment Rights Certificate, which application had been made by the Appellant; on the ground that the several decisions taken by the Respondent in dismissing the Appellant's appeal, by declaring that the Directors refusal decision, ..."**was not unreasonable, erroneous, unlawful, contrary to the principles of natural justice or at variance with the Regulations**"..., and this is evidenced in the clear conduct and decision rendered by the Respondent, as evidenced by the Declaration made on Page 2 of the Letter from the Respondent, dated July 23 2025, and which decision demonstrated that the Respondent acted unlawfully, by endorsing the failure of the Director of WORC's to adequately take into account, the considerations provided for; under Factor 5 of the said Regulations.

BACKGROUND

The Appellant first made application to the Director of WORC, on March 22 2024. In a letter in response to that application dated January 13 2025, he was advised as follows: that..." **your application for the right to reside permanently in the Cayman Islands ...has been refused... In considering an application...the criteria set out in the points system shall grant permanent residency to all applicants attaining one hundred and ten points...In this particular case, the total score attained is 109 points"**...(The letter so advising is produced as **Exhibit "MR1"**)

On January 21 of 2025, the Appellant an Appeal with the Respondent. The Receipt by which the Respondent acknowledged this process, is produced as **Exhibit "MR2"**)

The Appellant therefore contends, that the points award as per the letter dated January 21, was not lawfully, accurately, reasonably and fairly calculated, and in fact in relation to particularly Factor 5 considerations, the award by the Director of WORC, of "0" points in relation to the Community Involvement; were not adequately considered and fairly awarded, and the Appellant is of the view that, at the time of being so advised, and not achieving the **"single qualifying point"** was **erroneous in law, unreasonable, and in breach of natural justice principles.**

GROUND OF APPEAL AGAINST REFUSAL OF PERMANENT RESIDENCE

1. **THAT** the Respondent, failed to adequately consider or at all, as required by law to do, and therefore the sanctioning of the award of "0" points under **Factor 5 to the Appellant**, was wrong in law, principle and at variance with the Regulations. Further, and indeed, in **Immigration Board and Governor in Council v Streeter and K Coast Development 1999 CILR**, the Court of Appeal made reference to Lord Diplock's statement, made in the case of **Council of Civil Service Unions v Minister for Civil Service(2) 1985 1 AC at 410-411** where he described such a decision, as represented by the foregoing points award, and what decision we respectfully submit, epitomizes irrationality and yet endorsed by the Respondent, when His Lordship stated that..."**By irrationality I mean...It applies to a decision which is so outrageous in its defiance of logic...that no sensible person who has applied his mind to the question to be decided could have arrived at it...whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system...Irrationality by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review"**. It is submitted that the decision of the Respondent in this case, flew in the face of the facts as they were known at the time to the Respondent. It was indeed not a simple matter to be ignored, the fact that the Appellant's Community Investment; were starkly reflected and supported. Hence, an award of "0" points; was wrong in law, principle and at variance with the Regulations, and an award of points should have been made to the Appellant in all the circumstances, and by virtue of his cumulative points qualifications otherwise awarded, he most certainly should have been qualified, for an award of at least one point under this Factor, therefore the award of zero (0) points to the Appellant under this Factor; unreasonable, wrong in all the circumstances and at variance with the Regulations.

2. Further, this appeal is premised on the suggestion that, the Respondent has erred in its approach to the submission of material relevant to the award of points under **Factors 5, in Schedule 2 of the Immigration Regulations (2019) Revision)**... It is respectfully submitted that the **"point of law"** in contention, is encapsulated in the premise of precedent, which prohibits the Respondent from **"fettering" its obligation/discretion**, in such a way as to make its decision **"irrational"** and by extension, the Respondent's endorsement of what prima facie is the very blatant and obvious **"disregard"**, for the Appellants Community Involvement activities, and then this later being endorsed by the Respondent's decision, inescapably calls into question, the independence, lawful and rational conduct of the Respondent, whose statutory obligation, is to dispassionately review and correct, what can only be perceived ab initio, as **"irrational"** conduct by the Director of WORC, in the award of points to the Appellant in all the circumstances of this case; but particularly as relates the point awards for Community Involvement. Indeed as reflected in the precedent cases cited, such as the case of **Immigration Board and Governor in Council v Streeter and K Coast Development 1999 CILR**. In this case, as alluded to earlier, it was said and respectfully submitted, it is made **"contingent upon"** the premise that... **"If he does not obey these rules he may truly be said, and often is said to be acting unreasonably"**... The court is entitled to investigate the action of the local authority with a view to seeing whether they...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"... It is submitted that the decision of the Respondent in this case, falls squarely in the realms of the foregoing statement of Lord Greene, and the decision was indeed **"unreasonable"** and **"irrational"** in all the circumstances.
3. As well, in **Regina v Secretary of State for the Home Department, Ex parte Doody 1993 3 WLR 154** Lord Mustill set out six propositions as relates to the approach and practice of **"fairness"**, which is required in a case such as the current matter is. Chief among these propositions, is the first one which states thus...**"What does fairness require in the present case? My Lords I think it unnecessary to refer by name or quote from any of the often cited authorities... They are far too well known. From them I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances....both in the general and in their application to decisions of a particular type... What fairness demands is dependent on the context of the decision and this is to be taken in account in all its aspects... An essential feature of the context is... the legal and administrative system within which the decision is taken... Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representation on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken with a view to procuring its modification...** It is submitted that the foregoing statement is applicable, to categorise the Respondent's decision and exercise of discretion in this case, and as being relevant in the decision process taken by it, to make it

fall at variance with what circumstances, the Court drew reference to; and to make the decision in this matter unreasonable in all the circumstances and in Law, as the Respondent failed ...**"to take into account or neglected to take into account matters which it ought to take into account"**... primarily those which were relevant to the question of whether the Appellant had supplied **information**, that the Respondent should have justly and properly taken into account of in his application. (see **Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1947] 2 ALL ER 680,685.**) and **Section 24 of the Cayman Islands Constitution Order**)

4. The Respondent also failed to adequately consider or at all, that the Appellant had a fundamental human right, under the Laws of the Cayman Islands, which the Appellant was seeking to acquire. This conduct by the Respondent therefore, represented a ...**a defect in the decision making process... [by] an authority entrusted by Parliament with decision-making... where fundamental human rights are affected the court may require more by way of justification before it is satisfied that the decision is reasonable in that sense'**... (see **R v Secretary of State for the Home Department ex p Bugdaycay [1987] AC 514 as per Lord Templeman**) It is respectfully submitted that, this failure by the Respondent, was in breach of natural justice, as well as **Section 24 of the Cayman Islands Constitution Order 2009** and in all the circumstances.
5. **THAT** the Respondent appears to have acted negligently, and in the process acted in breach of its duty and fettered itself, by declaring on the first page of its Letter dated July 23 2025 that ...**"The Tribunal reviewed the Appeal Statement received 26th February 2025 and considered the Detailed Grounds of Appeal received on 12th March 2025.... 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) ..."**In considering an application for permanent residence etc...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"**... etc, and thereafter the Respondent continued to discuss in writing, matters concerned with **Section 9 of the Constitution**, which "discussion" was not relevant, pertinent to, nor concerned with, the Appellant's Ground of Appeal, which clearly in the Appellant's Appeal, he was requesting that the Respondent, reconsider the Factor 5-Community Involvement points award, as was decided by the Director of WORC, and further that, nowhere in the notes of the Respondent's decision, is there any evidence that the Respondent considered or at all, the petition of the Appellant, as that petition focused on, the **"unreasonable"** award of **"0"** points, in relation to his **Community Involvement**, and the Respondent appears to be seeking to **"justify"** not considering that blatant disregard for the Appellant's attendant rights, which were erroneously and unlawfully disregarded, with the result that **"0"** points were awarded by the Director of WORC, and consequently and to compound matters, the Respondent kept consistent, and demonstrated similar conduct, by itself also considering a **ground of Appeal**, not submitted by the Appellant, and rendering consequently, a decision which has no relevance whatsoever to his ground of appeal. The Respondent therefore, unlawfully sanctioned and supported, the **"wilful blindness"** and disregard of the Director of WORC, of an act and conduct which by any stretch of the imagination and by inescapable inference, was a **flagrant demonstration of disregard** by both the Respondent and Director of WORC, of a legal entitlement and a legitimate expectation of the Appellant, as

relates to the Appellant's Community Involvement qualifications, and this conduct was jointly and severally wrong in law, principle, natural justice and in all the circumstances, and that the resultant adverse decision made to affect the Appellant should be set aside

6. **THAT** the Court in the Cayman Islands, it is submitted that the decision of the Respondent in the given circumstances of this case, to "unanimously dismiss" the Appellant's Appeal, by erroneously supporting and endorsing the decision of the Director of WORC, on the issue of the points award, falls squarely within the realms of the statement of Lord Greene; thus rendering the decision by the Respondent, as being "unreasonable" and "irrational" in all the circumstances. The obligation to act "reasonable" is also highlighted in the case of **Mohanty v Medical Board** where it was said that the Respondent had given... "**manifestly inappropriate weight**" to a feature of their deliberations, to make it *Wednesbury* "unreasonable"; as is respectfully submitted to be, the manifested conduct of the Respondent, in the circumstances of this case; but rather though, it is in the case here where, "**appropriate weight**" has been withheld and or ignored, by the Respondent, which makes this decision by the Respondent; erroneous, at variance with the Regulations and wrong in principle, law and generally.
7. **THAT** the conduct of the Respondent, to sanction and support the unlawful decision of the Director of WORC, by accordingly dismissing the Appellant's Appeal against the refusal, of the grant of Permanent Residency, and on the basis that they did so, was clearly erroneous in law, clearly unreasonable, at variance with the Regulations, as well as, being done in disregard of the provisions contained in Section **24 of the Cayman Islands Constitution Order 2009**, and by extension; the rules of natural justice and in all the circumstances; to the detriment of the Appellant. In the precedent 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. 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**"...
8. The Respondent failed to consider or at all, the desirability of granting permanent residence to the Appellant, with the Appellant having demonstrated that he is a productive, law abiding individual, therefore the Respondent erred in applying tacit support to the said decision by the Director of WORC, by its own conduct of ultimately dismissing the appeal of the Appellant. The Appellant also held a legitimate expectation that on account of the fact that the Letter of Refusal dated January 13 2025, granted him Points award numbering "**109 points**".

AND THE APPELLANT PRAYS that **AS SUCH** the Decision imposed by the **First and Second** Respondents be set aside, on account of that which has transpired, particularly in relation to the Appellant's Educational Qualifications, Investment, and community services generally, and that the decision of the **First and Second** Respondents, purporting to refuse to grant the Appellant the right of Permanent Residency, should be set

aside as being wrong in principle, law, at variance with the Regulations, contrary to the established policies; and in all the circumstances unreasonable; and a Declaration be made to order a rehearing of the Appellant's appeal.



(Attorney at Law (for the Appellant))

Dated the 12 day August 2025

TO: The Clerk of the Court
AND TO: The Director of Border Control
AND TO: The Attorney General
AND TO: The Immigration Appeals Tribunal

This **Notice of Motion** was filed by Brady Attorneys at Law, Second Floor, Anderson Square George Town, Grand Cayman, P O Box 11740 APO, KY1-1009, Cayman Islands.