



GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE G 0236 OF 2025

**IN THE MATTER OF AN ORIGINATING MOTION FOR JUDICIAL REVIEW
AND IN THE MATTER OF ORDER 53 OF THE GRAND COURT RULES**

BETWEEN:

**THE KING
(On the Application of MIGUEL BENITEZ MIRABAL)**

Applicant

-and-

THE DIRECTOR OF CUSTOMS AND BORDER CONTROL

Respondent

**NOTICE OF ORIGINATING
MOTION**

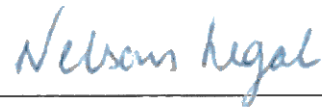
TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved by counsel for the Applicants, on the available to date convenient to the parties, for the following relief:

- A. Declaratory relief that the decision was wrong in law and/or unreasonable;
- B. Declaratory relief that the decision was taken arbitrarily and/ or that the reasons were inadequate constituting a breach of natural justice;
- C. An order quashing the decision (certiorari). and remitting the asylum application to the Respondent for reconsideration;
- D. Such further relief as may be needed to give effect to the Court's judgment; and

(1) 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 as set out in the accompanying statement of facts and grounds.

Dated this 8th day of September 2025

A handwritten signature in blue ink that reads "Nelsons Legal". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

Nelsons Legal

Attorneys-at-Law for the Applicant

TO: The Clerk of the Court

AND TO: The Attorney General's Chambers on behalf of the Respondent

CAUSE G 0236 OF 2025IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**IN THE MATTER OF AN ORIGINATING MOTION FOR JUDICIAL REVIEW
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Applicant

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THE DIRECTOR OF CUSTOMS AND BORDER CONTROL

Respondent

**STATEMENT OF FACTS AND
GROUNDS IN SUPPORT OF
THE APPLICANT'S
ORIGINATING MOTION FOR
JUDICIAL REVIEW**

A. INTRODUCTION

1. The Applicant is a Cuban national, born on 12 December 1988 in Havana. He currently resides in Grand Cayman. He has been working on permits in the Islands as a tattoo artist.
2. Upon the expiry of his work permit with a studio called District Syx, the Applicant applied for asylum on the grounds that he had a well-founded fear of persecution, pursuant to section 111A of the Customs and Border Control Act (2024 Revision) ("The CBC Act").
3. The Applicant's application was based upon fears of persecution for reasons of his membership of a particular social group and particular opinion. The Applicant claims that being a tattoo artist is considered a subversive profession in Cuba and he faced harassment by the authorities in Cuba.

4. The Applicant also claimed that he suffered harassment, detention and abuse for expressing his personal and political views. He claimed he was one of the organisers or an independent cultural movement of tattoo artists in Cuba which advocates creative freedom and the recognition. The Applicant claimed that through his work has become a person of interest and perceived as a threat to the Government and is at risk of persecution.
5. On 5 September 2025 the Applicant applied for and was granted permission to apply for judicial review and a stay of the decision that is the subject of this judicial review.

B. THE STATUTORY FRAMEWORK

6. Asylum applications are considered under Part 7 of the CBC Act, as read with the 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol. In considering an application, the Respondent must proceed pursuant to section 111A (1) which provides:

Determination of "well-founded fear"

111A (1) *The Director, in considering an application... shall take the approach set out in subsections (2) and (3) in arriving at a determination on whether an applicant's fear of persecution is, or remains, well-founded.*

(2) *The Director shall first determine whether on the balance of probabilities-*

(a) the applicant for asylum has a characteristic that could cause the applicant to fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or has such a characteristic attributed to the applicant by others; and

(b) the applicant does in fact fear such persecution in the applicant's country of nationality, (or where the applicant does not have a nationality, the country of their former habitual residence), as a result of that characteristic

(3) Where the Director determines that the asylum seeker is a person under subsection (2)(a) and fears persecution as described in subsection (2)(b), the Director shall determine whether there is a reasonable likelihood that, if the applicant is returned to the applicant's country of nationality (or where the applicant does not have a nationality, the country of the applicant's former habitual residence), the applicant would.—

- (a) be persecuted as a result of the characteristic described in subsection (2)(a); and*
 - (b) would not be afforded protection from persecution by —*
 - (i) that country; or*
 - (ii) any party, organisation, including any international organisation, controlling the State or a substantial part of the State.*
- 7. Upon assessing an asylum application, which will generally include an interview with the applicant, the Director will make one of the following three decisions:
 - a) Granting the application, which will result in the applicant being granted leave to remain in the Islands for three years, with the right to work for any employer (section 111 (4) of the CBC Act)
 - b) Refusing the application, whereupon the applicant has a right to appeal within fourteen days to the Refugee Protection Appeals Tribunal (section 111 (6) of the CBC Act). There is a further right of appeal therefrom to the Grand Court on a point of law (see section 115)
 - c) Refusing the application and certifying it as “clearly unfounded” (section 111 (4A) of the Act). An application so certified may not be appealed to the Refugee Protection Appeals Tribunal. (section 111 (6) and 116 (b)).
- 8. An asylum seeker may properly be detained and deported following a refused application upon service on him under section 122 of the CBC Act of a deportation order made by the Cabinet exercising its power under section 120 (1) (e).
- 9. The Cabinet may only exercise the deportation power upon receipt of a report on the case from a Magistrate. This, in turn, affords the refused asylum seeker a right to be heard before the same Magistrate before any such order is made under section 119 (2). The only other possible route of removal is for overstaying, which requires a notice stating the date of removal not being before 14 days of receipt of the notice (see section 101 (3) of the CBC Act).
- 10. This application for judicial review relates to the proper application of section 111 (4A) of the CBC Act (the provision allowing for certification that an application is “clearly unfounded”), and the necessity to give proper and adequate reasons.

C. THE DECISION DATED 1 SEPTEMBER 2025

11. The Respondent's decision was communicated by letter to the Applicant dated 1 September 2025 and provides:

I advise that in considering your application I have applied the balance of probabilities standard in accordance with section 111A(2) of The CBC Act and have determined the following pursuant to section 111A(2)(a) and (b) of The CBC Act:

That you have a characteristic that could cause you to fear persecution for reasons of either race, religion, nationality, membership of a particular group or political opinion but that you do not in fact have a well-founded fear of persecution •in your country of nationality, as a result of that characteristic.

From a plain reading of the above passage the Respondent found that section 111A (2) (a) was satisfied, but it would appear that he did not consider that section 111A (2) (b) was satisfied – in that he did not believe that the Applicant was in fact in fear. If so, this was decision was based upon the credibility of the Applicant.

12. The Decision goes on to provide that none of the reasons given for applying for asylum established that the applicant had a well-founded fear of persecution. Finally, the decision includes a certification under 111 (4A) on the basis that the applicant had “failed to establish a Convention reason” and the applicant has no right of appeal to Refugee Protection Appeals Tribunal pursuant to section 116(b).
13. The Decision advises the Applicant that the Customs and Border Control Service will proceed with his repatriation to Cuba, but does not advise him of any application to a summary court for a report for Cabinet under section 119 (1), required for a deportation order under section 120 (1) (e) or his right to be heard in that application pursuant to section 119 (2). It is unclear whether the final sentence of the decision represents a notice of removal under section 101 (3) which allows for fourteen days, but plainly the implication is that the Applicant will be repatriated promptly.

D: THE TEST FOR CERTIFYING THE CLAIM AS “CLEARLY UNFOUNDED”

14. Section 111 (4A) is intended to filter out applications that are not based upon any of the Convention reasons listed at section 111A (2) (a). If, for example, the application is based upon economic hardship rather than persecution for one of the reasons qualifying the applicant for refugee status listed in 111A (2) (a), it will be bound to fail and there will be no right of appeal.
15. The legislation is based upon section 94 of the UK Nationality, Immigration and Asylum Act 2002. The UK legislation provides that a claim may be certified if the applicant is entitled to reside in one of the states listed at 94 (4) of the UK Act

where there are considered to be no serious risk of persecution. Cuba does not feature in this list.

16. In addition to certification where the applicant may reside in a “white-list” state, section 94(1) of the UK Act also allows the certification of claims on a case-by-case basis. The UK Home Office guidance on the certification of claims under section 94. sets out the principles previously established by Lord Phillips in *ZL and VL -v- SSHD* [2003] EWCA Civ 25 at paragraph 57 for the assessment of asylum claims for certification. To issue a certificate, the decision maker must:

- i) consider the factual substance and detail of the claim;
- ii) consider how it stands with the known background data;
- iii) consider whether in the round it is capable of belief;
- iv) if not, consider whether some part of it is capable of belief;
- v) consider whether, if eventually believed in whole or in part, it is capable of coming within the Convention.

If any of the answers suggest the claim could succeed on any legitimate basis, then the claim is not “clearly unfounded” and it would not be appropriate for the Director to exercise the power conferred by Section 111 (4A).

17. In the absence of local guidance, the approach to the assessing when certification is appropriate should proceed in the same way. In respect to credibility, the Director should not certify simply because he does not believe the narrative put forward by the applicant on the balance of probabilities, or even if he does not think it would have a reasonable prospect of belief. He may only properly certify an application as “clearly unfounded” where the account is *incapable* of belief. The test as to whether a claim is clearly unfounded is an objective one and the threshold is high. Claims should only be certified as clearly unfounded if it is clear beyond reasonable doubt that no tribunal, taking the claim at its highest, would be entitled to allow an appeal.

18. The decision to certify here appears not to have been on this basis. The decision expressly provides that the applicant had a characteristic that “could” cause him to fear persecution for a Convention reason as provide in section 111A (2) (a). It follows that the reason that the application was refused was not really because the claim was not capable of coming within the Convention, but because the Respondent doubted the Applicant’s credibility, as he expressly stated, on the balance of probabilities. An adverse finding on this standard, if properly arrived upon, would justify refusal, but not certification.

- 19.If the Respondent or his team simply did not believe the Defendant, that falls far short of a determination that the account of fear was incapable of belief. Given the need for the most anxious scrutiny of asylum applications, and the severe result of certification is a repatriation to Cuba with no right of appeal, the reasons why the account was incapable of belief must be cogent.

D: ADEQUACY OF REASONS

- 20.Section 111 (4E) of the CBC Act required the Respondent to give reasons for the decision, which is also a constitutional right under Section 19 (2) of Part 1 of the Cayman Islands Constitution Order, 2009.
- 21.It not simply enough to state a result on principle issue. The parties are entitled to know the reasoning and the primary findings of fact which lead to the conclusion. The reasons must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions we reached, disclosing how any issue of law or fact was resolved.¹
- 22.The need for cogent reasons, based upon a proper analysis of the evidence, is fundamental in order to appreciate the basis for certification under section 111 (4A) of the CBC Act. Although the letter states that the information contained in the application was considered very carefully, there is no reference to any of the evidence whatsoever. Indeed, the decision is so vague and in such general terms, that it appears on its face to be simply a standard form refusal which could be applied to a refusal and certification in any case.
- 23.This has occasioned demonstrable prejudice to the Applicant, who is unable to evaluate how the Respondent approached the evidence and whether this was fair and reasonable. It stymies his ability to properly challenge the decision.
- 24.In particular, the reason for certification seems to contradict the earlier finding. It states in the most generic of terms:

Since you failed to establish a Convention reason for your application, I am also of the opinion that your application is so clearly without substance that it is bound to fail

Yet earlier in the decision it is stated in terms that the Applicant had a characteristic that *could* cause him to fear persecution for a Convention reason.

¹See Mangatal J in *HS et al v IAT* (unreported 10 May 2019) at paragraph 29 citing Henderson J in *National Roads Authority v Bodden* [2014 (2) CILR 47] at paragraph 25 in turn citing *South Bucks DC v Porter (No.2)* (3) [(2004) WLR 1953 at para 35]

The Respondent does not properly explain why he found that the Applicant had failed to establish a Convention reason.

25. The reasons, if they can be described as such, are manifestly inadequate. It is a generic standard form letter with not reference at all to the facts behind the application. It is so generic that it is difficult to shake the nagging suspicion that this decision letter is a document practically identical to that received by all Cuban asylum seekers upon refusal with minor edits to perhaps the names at the top and the words "could" vs "could not" and "do" vs "do not" at paragraph three.

26. The relief is accordingly sought on the basis of the matters set out above.

NELSONS LEGAL

8 September 2025



GRAND COURT OF THE CAYMAN ISLANDS

CAUSE G

OF 2025

In the matter of Part 7 Customs and Border Control Act (2024 Revision)

The King (on the application of MIGUEL BENITEZ MIRABAL

Applicant

AND

THE DIRECTOR OF CUSTOMS AND BORDER CONTROL

Respondent

**EX PARTE APPLICATION FOR LEAVE APPLY FOR
JUDICIAL REVIEW AND A STAY
Pursuant to Order 53, rule 3 of the Grand Court Rules**

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of Applicant	Miguel Benitez Mirabal 658 Shamrock Road # 405 George Town Grand Cayman
Name of Respondent	The Director of Customs and Border Control
Judgment, order, decision or other proceeding in respect of which relief is sought:	The Respondent's decision dated 1 September 2025, certifying the Applicant's asylum application as "clearly unfounded" pursuant to section 111 (4A) of the Customs and Border Control Act (2024 Revision).
Relief sought:	Upon the hearing of the Notice of Motion, the Applicant seeks:

This Application for Permission to Apply for Judicial Review is filed on behalf of the Applicant by their attorneys-at-Law, Nelsons, whose address for service is The Grand Pavilion, 802 West Bay Road, Bougainvillea Way, Grand Cayman, Cayman Islands

	A. Declaratory relief that the decision was wrong in law and/or unreasonable B. Declaratory relief that the decision was taken arbitrarily and/ or that the reasons were inadequate constituting a breach of natural justice C. An order quashing the decision (certiorari). and remitting the asylum application to the Respondent for reconsideration. D. Costs The Applicants further seeks: E. A direction under Order 53, rule 3(10) of the Grand Court Rules that the grant of leave shall operate as a stay of the decision under challenge pending the final determination of the application for judicial review.
Name and address of Applicant's attorney	Nelsons Legal, The Grand Pavilion, 802 West Bay Road, Bougainvillea Way, Grand Cayman, Cayman Islands
Signed: <i>Nelsons legal</i>	Dated: 5 th day of September 2025



A. INTRODUCTION

1. The Applicant is a Cuban national, born on 12 December 1988 in Havana. He currently resides in Grand Cayman. He has been working on permits in the Islands as a tattoo artist.
2. Upon the expiry of his work permit with a studio called District Syx, the Applicant applied for asylum on the grounds that he had a well-founded fear of persecution, pursuant to section 111A of the Customs and Border Control Act (2024 Revision) ("The CBC Act").
3. The Applicant's application was based upon fears of persecution for reasons of his membership of a particular social group and particular opinion. The Applicant claims that being a tattoo artist is considered a subversive profession in Cuba and he faced harassment by the authorities in Cuba.
4. The Applicant also claimed that he suffered harassment, detention and abuse for expressing his personal and political views. He claimed he was one of the organisers or an independent cultural movement of tattoo artists in Cuba which advocates creative freedom and the recognition. The Applicant claimed that through his work has become a person of interest and perceived as a threat to the Government and is at risk of persecution.

B. THE STATUTORY FRAMEWORK

5. Asylum applications are considered under Part 7 of the CBC Act, as read with the 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol. In considering an application, the Respondent must proceed pursuant to section 111A (1) which provides:

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(2) *The Director shall first determine whether on the balance of probabilities-*

(a) the applicant for asylum has a characteristic that could cause the applicant to fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or has such a characteristic attributed to the applicant by others; and

(b) the applicant does in fact fear such persecution in the applicant's country of nationality, (or where the applicant does not have a nationality, the country of their former habitual residence), as a result of that characteristic

(3) Where the Director determines that the asylum seeker is a person under subsection (2)(a) and fears persecution as described in subsection (2)(b), the Director shall determine whether there is a reasonable likelihood that, if the applicant is returned to the applicant's country of nationality (or where the applicant does not have a nationality, the country of the applicant's former habitual residence), the applicant would –

(a) be persecuted as a result of the characteristic described in subsection (2)(a); and

(b) would not be afforded protection from persecution by –

(i) that country; or

(ii) any party, organisation, including any international organisation, controlling the State or a substantial part of the State.

6. Upon assessing an asylum application, which will generally include an interview with the applicant, the Director will make one of the following three decisions:
 - a) Granting the application, which will result in the applicant being granted leave to remain in the Islands for three years, with the right to work for any employer (section 111 (4) of the CBC Act)
 - b) Refusing the application, whereupon the applicant has a right to appeal within fourteen days to the Refugee Protection Appeals Tribunal (section 111 (6) of the CBC Act). There is a further right of appeal therefrom to the Grand Court on a point of law (see section 115)
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7. An asylum seeker may properly be detained and deported following a refused application upon service on him under section 122 of the CBC Act of a deportation order made by the Cabinet exercising its power under section 120 (1) (e).



8. The Cabinet may only exercise the deportation power upon receipt of a report on the case from a Magistrate. This, in turn, affords the refused asylum seeker a right to be heard before the same Magistrate before any such order is made under section 119 (2). The only other possible route of removal is for overstaying, which requires a notice stating the date of removal not being before 14 days of receipt of the notice (see section 101 (3) of the CBC Act).
9. This application for leave to apply for judicial review relates to the proper application of section 111 (4A) of the CBC Act (the provision allowing for certification that an application is "clearly unfounded"), and the necessity to give proper and adequate reasons.

C. THE DECISION DATED 1 SEPTEMBER 2025

10. The Respondent's decision was communicated by letter to the Applicant dated 1 September 2025 and provides:

I advise that in considering your application I have applied the balance of probabilities standard in accordance with section 111A(2) of The CBC Act and have determined the following pursuant to section 111A(2)(a) and (b) of The CBC Act:

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From a plain reading of the above passage the Respondent found that section 111A (2) (a) was satisfied, but it would appear that he did not consider that section 111A (2) (b) was satisfied - in that he did not believe that the Applicant was in fact in fear. If so, this was decision was based upon the credibility of the Applicant.

11. The Decision goes on to provide that none of the reasons given for applying for asylum established that the applicant had a well-founded fear of persecution. Finally, the decision includes a certification under 111 (4A) on the basis that the applicant had "failed to establish a Convention reason" and the applicant has no right of appeal to Refugee Protection Appeals Tribunal pursuant to section 116(b).
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14. The legislation is based upon section 94 of the UK Nationality, Immigration and Asylum Act 2002. The UK legislation provides that a claim may be certified if the applicant is entitled to reside in one of the states listed at 94 (4) of the UK Act where there are considered to be no serious risk of persecution. Cuba does not feature in this list.
15. In addition to certification where the applicant may reside in a "white-list" state, section 94(1) of the UK Act also allows the certification of claims on a case-by-case basis. The UK Home Office guidance on the certification of claims under section 94. sets out the principles previously established by Lord Phillips in *ZL and VL -v- SSHD* [2003] EWCA Civ 25 at paragraph 57 for the assessment of asylum claims for certification. To issue a certificate, the decision maker must:
- i) consider the factual substance and detail of the claim;
 - ii) consider how it stands with the known background data;
 - iii) consider whether in the round it is capable of belief;
 - iv) if not, consider whether some part of it is capable of belief;
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If any of the answers suggest the claim could succeed on any legitimate basis, then the claim is not "clearly unfounded" and it would not be appropriate for the Director to exercise the power conferred by Section 111 (4A).

16. In the absence of local guidance, the approach to the assessing when certification is appropriate should proceed in the same way. In respect to credibility, the Director should not certify simply because he does not believe the narrative put forward by the applicant on the balance of probabilities, or even if he does not think it would have a reasonable prospect of belief. He may only properly certify an application as "clearly unfounded" where the account is *incapable* of belief. The test as to whether a claim is clearly unfounded is an objective one and the threshold is high. Claims should only be certified as clearly unfounded if it is clear beyond reasonable doubt that no tribunal, taking the claim at its highest, would be entitled to allow an appeal.



17. The decision to certify here appears not to have been on this basis. The decision expressly provides that the applicant had a characteristic that "could" cause him to fear persecution for a Convention reason as provide in section 111A(2)(a). It follows that the reason that the application was refused was not really because the claim was not capable of coming within the Convention, but because the Respondent doubted the Applicant's credibility, as he expressly stated, on the balance of probabilities. An adverse finding on this standard, if properly arrived upon, would justify refusal, but not certification.
18. If the Respondent or his team simply did not believe the Defendant, that falls far short of a determination that the account of fear was incapable of belief. Given the need for the most anxious scrutiny of asylum applications, and the severe result of certification is a repatriation to Cuba with no right of appeal, the reasons why the account was incapable of belief must be cogent.

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19. Section 111 (4E) of the CBC Act required the Respondent to give reasons for the decision, which is also a constitutional right under Section 19 (2) of Part 1 of the Cayman Islands Constitution Order, 2009.
20. It not simply enough to state a result on principle issue. The parties are entitled to know the reasoning and the primary findings of fact which lead to the conclusion. The reasons must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions we reached, disclosing how any issue of law or fact was resolved.¹
21. The need for cogent reasons, based upon a proper analysis of the evidence, is fundamental in order to appreciate the basis for certification under section 111 (4A) of the CBC Act. Although the letter states that the information contained in the application was considered very carefully, there is no reference to any of the evidence whatsoever. Indeed, the decision is so vague and in such general terms, that it appears on its face to be simply a standard form refusal which could be applied to a refusal and certification in any case.
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23. In particular, the reason for certification seems to contradict the earlier finding. It states in the most generic of terms:

Since you failed to establish a Convention reason for your application, I am also of the opinion that your application is so clearly without substance that it is bound to fail

Yet earlier in the decision it is stated in terms that the Applicant had a characteristic that *could* cause him to fear persecution for a Convention reason. The Respondent does not properly explain why he found that the Applicant had failed to establish a Convention reason.

24. The reasons, if they can be described as such, are manifestly inadequate. It is a generic standard form letter with not reference at all to the facts behind the application. It is so generic that it is difficult to shake the nagging suspicion that this decision letter is a document practically identical to that received by all Cuban asylum seekers upon refusal with minor edits to perhaps the names at the top and the words "could" vs "could not" and "do" vs "do not" at paragraph three.

25. The relief is accordingly sought on the basis of the matters set out above.

NELSONS LEGAL

5 September 2025