



COURT OF THE CAYMAN ISLANDS

CAUSE: G OF 2025

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

..... MATTER OF A DISMISSAL OF AN APPEAL AGAINST THE DECISION BY THE
IMMIGRATION APPEALS TRIBUNAL- SECTION 21(8) (a) (c) and (d) OF THE IMMIGRATION
(TRANSITION) ACT (2022 REVISION)

AND: IN THE MATTER OF SECTION 22(5) OF THE IMMIGRATION (TRANSITION) ACT (2022 REVISION)

AND: IN THE MATTER OF SECTION 23(2) 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: RANDY COLIN GLADSTONE 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 :-

GROUND'S 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 3 to the Appellant**, was wrong in law, principle and at variance with the Regulations, on account of the fact that the Respondent declared that..."The Tribunal did not award points under this factor to the Appellant as proof of his monetary investment over \$50,000.00 such as bank transfer/receipts or renovations/improvements on property located in Lower Valley, Block32E Parcel 176 **was not provided**"....and the Appellant contends that this information was indeed provided as "fresh evidence, and that the Respondent unlawfully and in breach of **Section 22(5) of the Immigration (Transition) Act 2022**, failed in its obligation which required that"The Immigration Appeals Tribunal...shall take

into account any fresh evidence put forward by the Appellant"... and the fact that the Respondent states that it was NOT provided, whereas the Appellant asserts that this **fresh evidence**, was in fact provided to the Respondent. 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 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 it does appear that despite the submission of the "**fresh evidence**" by the Appellant, for some inexplicable but ultimately "**unlawful reason**" it was never "**taken into account**" by the Respondent as required so to do; by Law. It was indeed not a simple matter to be ignored, the fact that the Appellant's Local Investment; were starkly reflected and supported by this fresh evidence submitted by him. 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 further point(s) under this Factor, therefore the award of zero (**0**) points to the Appellant under this Factor; was wrong in law, 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 4(b)** It is respectfully submitted that the "**point of law**" in contention, is encapsulated in the premise of precedent, which prohibits the Respondent from taking into account matters it should not and failing to take into account, matters that it should have, thereby resulting in a "fettering" of 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/misreading", in respect of the Appellants **Salary and Income**, and then this later being evidenced by the Respondent's decision, inescapably calls into question, the lawful and rational conduct of the Respondent, whose statutory obligation, is to dispassionately review and correct, the award of points to the Appellant in all the circumstances of this case; but particularly as relates to, the point awards for Salary and Income. 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, and it is made "contingent upon" the premise that... **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, as

the Respondent makes reference to the fact that..." A deduction of \$30,000.00 was made for accompanying non-Caymanian children Jayden Nickhail Gladstone and Kayden Nathan Gladstone twins born on 26th December 2014 of compulsory school age in accordance with Schedule 2 of the Immigration Regulations(2025 Revision) [\$104,066.00.50 Appellant-\$00.00 spouse-\$30,000.00 (children) =\$74,066.50" when in truth and fact, the "twins" were never indicated by the Appellant, as to be accompanying him, and the decision was indeed "unreasonable", "unlawful" and "irrational" in all the circumstances; consequentially having the effect of adversely impacting the Appellant's points award.

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 and unlawful 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 **fresh information, or conversely took into account the matter of stating and acting upon to the detriment of the Appellant, a "non-fact" because he had not included his "twin children" in the manner described by the Respondent, and in addition, the fact that his wife was unemployed** at the time, as it is submitted that by himself; the appellant could have been qualified for the grant that the Respondent should have justly and properly not taken this into account; when deliberating the Appellant's 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** according to 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, 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" and therefore in all the circumstances unlawful. 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; as ultimately this resulted in the Appellant being denied Permanent Residency.
6. **THAT** the conduct of the Respondent, to sanction and uphold the unlawful decision denying the Appellants grant, 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 and by extension; the rules of natural justice and in all the circumstances; was 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"**...

WRONG IN LAW/ULTRA VIRES

Admittedly, the Respondent as a statutory body is endowed with 'statutory discretion', enabling it to adopt and implement its own policies and guidelines in exercise of its functions.

Notwithstanding, at common law, the general principle in relation to statutory authorities policies, is that no one upon whom a statutory discretion has been conferred, may adopt a practice in relation to its exercise; which has the effect of fettering that discretion and particularly to the detriment of someone such as the Appellant in this case is.

FINAL SUBMISSIONS

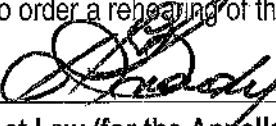
By merely reviewing the Director's reasons, and thereafter concurring with its decision, the Respondent's 'policy' is arguably, in essence a mere 'sham' exercise, as it appears that there was no consideration of the individual merits of the clearly stated Ground of Appeal and the Respondent appears to have focused on Article 9 of the Cayman Islands Constitution Order 2009, which was not being argued by the Appellant. The

Respondent's decision therefore appears to have been based solely on, matters not advanced to it for consideration from the Appellant.

The Respondent should have enquired why the Director would award the Appellant "0" points; under Factor 4 and 4(b), which failure we respectfully submit, had the effect of denying him points, the effect of which the Appellant fell short of the required points, which would have enabled him to attain Permanent Residence. Had the Respondent given the Appellant's appeal, due consideration, the Respondent would have considered the fact, that under the Factor 4, and 4(b) where the Appellant was awarded 0 points, this meant that the "fresh evidence" was unlawfully not taken into account and deductions made as per and regarding his "twins" as dependants accompanying him; when this was not the case.

The Respondent should have therefore applied its 'mind' to the possibility that in not **strictly** applying the points system, the Director, and by extension, the Respondent, may have adopted a policy so restrictive, or else did not adequately consider it or at all, and that it undermined the Appellant's individual rights. Furthermore, the Respondent should be mindful that the courts will not allow a strict policy to undermine individual rights. See for example, *R v Secretary of State for the Home Department ex parte Simms*¹.

AND THE APPELLANT PRAYS that **AS SUCH** the Decision imposed by the Respondent-be set aside, on account of that which has transpired generally, and that the decision of the Respondent, purporting to support the Director's decision to refuse the Appellant the right of Permanent Residency, and thereby to dismiss the Appellants Appeal, 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 pray that a Declaration be made to order a rehearing of the Appellant's appeal.



(Attorney at Law (for the Appellant))

Dated the 3 day November 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.
