

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2025

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

AND IN THE MATTER OF AN APPLICATION FOR A RESIDENCY AND EMPLOYMENT RIGHTS CERTIFICATE
PURSUANT TO SECTION 37 (1) IMMIGRATION (TRANSITION) ACT (2022 REVISION).

GEMMA LOUISE BURCH

Appellant



-v-

IMMIGRATION APPEALS TRIBUNAL

Defendant

NOTICE OF
ORIGINATING MOTION

TAKE NOTICE that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on the _____ day of _____ 2025 at _____ a.m./p.m. or as soon thereafter as counsel can be heard, by counsel on behalf of the Plaintiff for an order in the following terms:

- i. The decision of the Defendant dated 7 November 2025 was erroneous in law, unreasonable and / or a breach of natural justice.
- ii. The decision of the Defendant dated 7 November 2025 is quashed and is to be remade.
- iii. The matter is to be remitted to the Defendant for the reconsideration of the Plaintiff's points.

And for an order that the costs, of and incidental, to this Application be paid by the Defendant.

AND FURTHER TAKE NOTICE that the grounds of this application are:

1. On 26 October 2013, the current Permanent Residence system was introduced. Save for a change to Factor 1, the System has essentially remained the same since 2013. No Permanent Residence

This Motion was filed by HSM Chambers, Attorneys at Law for and behalf of the Plaintiff herein whose address for service and correspondence is 68 Fort Street, George Town, PO BOX 31726, Grand Cayman KY1-1207, Cayman Islands

applications submitted post 26 October 2013 were considered until 2017. When the Plaintiff applied for Permanent Residence, the relevant Act was the Immigration (Transition) Act (2022 Revision) ("the Act") and the Points system was found in the Immigration Regulations (2019 Revision)("the Regulations").

2. To obtain Permanent Residence, an applicant is required to be awarded 110 points in total, after the various factors are considered.
3. Despite the ability for various decision makers to consider PR applications and reach different conclusions based upon the same information, no policies have ever been published in regard to the consideration and determination of applications. The only guidance is found in the forms and the regulations themselves. The applications form which the Appellant filled in completed is reference as "WORC/RRW (2023/06) R37". On page 11/13 it states "Please see the online Guidance Notes for Detailed Instructions". There were and still are no "online guidance notes for detailed instructions".
4. As a result, it is averred that the points system, in the absence of policies can be arbitrary and opaque.
5. Of particular relevance in the Appellant's matter is that there is no definition of:
 - Youth Programme.
 - Sports Programme.
 - Arts Programme.
 - Voluntary organisation
6. Equally, there is no policy in how to assess an applicant if they are a divorced spouse and their children, whilst living in the Cayman Islands, are dependents on the former spouse's Immigration permission. Likewise, there is no definition of "accompanying" either.
7. On 13 December 2023, the Appellant applied for Permanent Residence ("PR") in the Cayman Islands and an Residency and Employment Rights Certificate ("RERC"). In the cover letter which

accompanied her application, the Appellant mentioned all three of her children and the fact that she was no longer married to their father.

8. The Appellant's application also contained a letter from her ex-husband confirming that he had applied for Permanent Residence for himself and his three children.
9. The Appellant's ex-husband had in fact applied for PR on 7 December 2023 and his (and the Appellant's) children were listed as accompanying dependents. The PR application also conceded that CI\$45,000 would have to be deducted from his total salary pursuant to Factor 4b.
10. On 23 July 2024, the Appellant's ex husband was granted PR and an RERC and his and the Appellant's three children were listed as dependents on his RERC.
11. On 8 July 2024, the Appellant's application was deferred. One of the reasons for the deferral was to provide evidence of child maintenance payments. This evidence was provided.
12. In a decision dated 21 August 2024, the Appellant's PR application was denied. She was awarded 14 points for Factor 4b which can only have been awarded if the Director of WORC did not deduct any points from her salary to take into account her children.
13. The Appellant appealed the decision of the Director of WORC. In the Appeal the Appellant raised the following grounds of Appeal.
 - i. The PR points system was arbitrary because it lacked definition and policies.
 - ii. The Director of WORC erred when he failed to award her or sufficient points for:
 - Training and mentoring Caymanians.
 - Volunteering with CILPA.
 - Participating and Assisting in a Youth Programme, i.e. for her involvement with Kri Performing Arts and Bailamos Dance Studio.

14. In a decision dated 21 July 2025, the decision of the Director of WORC was quashed by the 1st Defendant and a de novo hearing was ordered to take place. The Appellant was notified that the Tribunal were minded to deduct points for Factor 4b.
15. Fresh evidence and affidavit were submitted by the Appellant on 5 September 2025, to the Defendant. In this the Appellant sought to be awarded 119.4 points in total.
16. In particular the Appellant claimed 12 points for Factor 4b and 20 points for Factor 5.
17. The basis of the Appellant's claim for Factor 4b was:
 - i. She was not seeking to add her children to her application and that they have permission to live in the Cayman Islands through their father.
 - ii. Her salary was CI\$85,553.06 but that was not an accurate representation of her income as in the year 2024, she earned CI\$99,189.47.
18. For Factor 5, the Appellant claimed 20 points based upon her involvement with various organisations. The Appellant accepted that the maximum points that she could obtain was 20 points but contended the totality of her involvement could have led to the award of more points, if possible. In particular the Appellant claimed:
 - 1.5 points for volunteering with the Crisis Centre.
 - 12 points for training and mentoring Caymanians.
 - 4.5 points for the time she spent with Kri Performing Arts.
 - 4.5 points for the time that she spent with Bailamos Dance studio.
 - 7.5 points for the time she spent volunteering with CILPA.
19. In the letter from Kri Performing Arts, dated 6 August 2025, Kirk Rowe set out what the Appellant had done in the three years that she had volunteered more than 35 hours. He made it clear that:
 - The Appellant had volunteered for this organisation.
 - That Dance is "one of the most human and timeless forms of artistic expression".

20. In the letter from Kenneth Ebanks of Bailamos Dance Studios he confirmed that the Appellant had volunteered more than 35 hours in three separate years and that:

- The Appellant had helped provide support for the annual shows which are for children of varying ages between 5 to 15 years of age.
- That Dance can be both an Art and a Sport.

21. Further to the above the Appellant provided evidence from at least 8 Caymanians who confirmed that she had trained and mentored them for more than 35 hours in any one year.

22. Likewise the Appellant provided evidence from CILPA which confirmed that she provided support to CILPA for more than 35 hours in 2020 and 2021 and that her support was on a voluntary basis.

23. In a decision dated 7 November 2025, the Appellant was awarded 102.43 points thus not obtaining sufficient points to obtain PR. Of particular importance to this appeal is the fact the Appellant was awarded:

- 3 points for Factor 4b.
- 12 points for Factor 5.

24. If the Appellant had been awarded the points she claimed for Factor 4b and 5 she would have been granted PR and an RERC.

25. The Defendant explained that the Appellant was awarded 3 points for Factor 4b on the basis that as she is “a co-parent, shares all responsibilities with 50% custody of the [children] who remain in this case wholly or substantially dependent upon the Appellant” hence the deduction of \$45,000 from her salary.

26. In regards to Factor 5, the Defendant confirmed that the Appellant was awarded no points for her time with Bailamos and Kri Studios because they were not a “registered non profit organisation”.

The Defendant appears to have failed to consider whether or not her time with these

organisations could be regarded as a Participation and assistance in a Youth Programme, or a Arts Programme or a Sports Programme.

27. In regard to the Training and Mentoring of Caymanians, it appears that the Appellant was awarded 10.5 points based upon the number of years she provided training and mentoring to Caymanians not on the basis of the number of Caymanians that she provided support to.
28. In regard to CILPA, the Tribunal stated that “The Appellant holds no practicing certificate or membership and in essence works or carried out the assignments for the lawyer / partner who held either the post of Vice President or Secretary at the association to whom she is assigned to at her place of employment”.

Grounds of Appeal

Unreasonable

29. The Appellant avers that the whole PR points system in the absence of policies and procedures is arbitrary and opaque and thus unreasonable. While it is accepted that policies cannot cover every eventuality and scenario, certain areas crop up frequently which applicants and decision makers require standardised guidance to help them assess matters correctly and consistently.
30. In the absence of policies at the current time, decision makers are making wholly subjective assessments as to:
 - What accompanying means.
 - What a Youth Programme is.
 - What a Sports Programme is.
 - What a Arts Programme is.
 - What a voluntary programme is.
31. In the absence of clear guidance it is contended the decisions are frequently dependent upon who is the decision-maker is.

32. This not only affects decision makers but also applicants. Applicants who volunteer for organisations might wish to volunteer for a “different” organisation depending on its status. That would have a detrimental effect on Caymanian society as a whole. Certainly, it has never been set out in any formal policy document that Youth, Sports or Arts programmes have to be a Non profit organisation prior to this decision. This illustrates the arbitrary nature of the existing decision-making framework
33. Likewise, the issue of divorced spouses and their children requires a clear policy so as individuals know how to set out their applications. Prior to the decision of the Appellant, HSM Chambers are unaware of a decision maker deducting the full \$15,000 from an applicant in similar circumstances who had listed a child on their application but not sought to add them as a dependent.
34. In the absence of these policies it is contended that the system is unreasonable.

Erroneous in Law / Contrary to the Regulations

35. Further to the above, the Appellant would contend that the Defendant made a number of errors of Law and if they had assessed her application correctly, the Appellant would have obtained PR and a RERC. Those errors are in relation to Factor 4b and Factor 5.

Factor 4b.

36. The notes that accompany Factor 4b state:

- (1) *An applicant must prove that that applicant has sufficient resources through income and salary to support themselves and any dependants accompanying that applicant. Also the applicant's ability to provide sufficient funds for that applicant and their healthcare, education, accommodation and maintenance is of paramount importance for prospective long term residents.*
- (2) *When determining the income bracket into which an applicant falls, that applicant's gross income minus an amount for each dependent child shall be used. In the case of each accompanying child of compulsory school age who is not Caymanian, CI\$15,000 per annum shall be deducted. If the dependent child is not accompanying, CI\$2,500 will be deducted.*

(3) *Where the applicant has a dependant child (or dependant children as the case may be) who is not of compulsory school age and not Caymanian, a deduction of CI\$12,000 per dependant per annum shall be made.*

37. It therefore appears that for an applicant to have a deduction for having a child; the deduction will only happen if the following is satisfied:

- i. The child is dependent on the applicant; and
- ii. The child is accompanying the applicant.

38. If it is the case that the only (i) is satisfied, CI\$2,500 will be deducted per child.

39. In this case, the children were not accompanying, the Appellant as they were already legally and ordinarily Resident in the Cayman Islands on the basis of their father's Immigration permission. Furthermore, they were "dependent" upon him for their Immigration permission. In the event that the Appellant's ex husband was to leave the Cayman Islands, alternative permissions would have to be obtained by the Appellant and that and only at that point would their status and connection to her become relevant.

40. The Appellant would contend that for them to be "accompanying" her, they must be attached to her application and dependent upon it's success. Which in this case, they were not. The Appellant's children were already legally and ordinarily resident in the Cayman Islands at the time that her application was decided upon due to the success of their father's application.

41. In the current matter, the Appellant was quite clear in her application that her children were not "accompanying" her as they were listed on their father's application. The Tribunal have failed and thus erred in the current matter, because they have proceeded on the basis that a notional dependent is sufficient, and not considered the secondary test of "accompanying".

42. By doing so the Defendant erred in the award of points.

Factor 5

43. In the current matter, the Defendant erred in the award of points in the following manner:

- i. 1.5 extra points should have been awarded to the Appellant for the training and mentoring of Caymanians. At the current time, the Board are proceeding on the basis that if you train 1 Caymanian for 8 years you get 12 points, but if you training 15 Caymanians over 7 years, you only get 10.5 points. It is averred that this is incorrect and the correct metric would be the number of Caymanians trained. In this case the Appellant should therefore have been awarded 12 points.
- ii. The Appellant should have been awarded points for her involvement with Kri Studios and Bailamos, whether that is on the basis that the activity was with a Arts Programme, a Youth Programme, a Sports Programme or a Voluntary Organisation. What category the activity falls into is up to the decision maker but that points should have been awarded and those points should have been at least 8 points.

It appears from the decision that either the Defendant has not assessed her case, despite submissions that they should, on the basis that this involvement could be an Youth Programme, an Arts Programme, a Sports Programme or a Voluntary Organisation or that irrespective of the actions taken the award of points will only take place if they happen within a “non-profit” organisation.

If the Defendant’s interpretation is correct that makes Factor 5 (II)(a)-(g) completely superfluous. Because it appears that the Tribunal are proceeding on the basis that the relevant activity must take place under the guidance of a “non-profit” therefore the only relevant factor is Factor 5 (ii)(h). Therefore if 35 hours training and mentoring took place with a Caymanian in an Attorney’s Office, that would not be considered relevant because this is not a “non-profit” organisation

Equally, the Defendant has focused on the non-profit element of Factor 5 (II)(h) and not considered whether or not either Kri Studios or Bailamos could be regarded as a voluntary organisation. Thus further compounding their error.

iii. The Appellant should have been awarded points for her involvement with CILPA. The very short explanation as to why points should not be awarded for this was because:

- The Appellant did not hold a practising certificate or membership with CILPA.
- That her actions were at the behest of her direct supervisor.

If it is the case that points can only be awarded for an individual's involvement with CILPA if they are Attorney, then presumably the Tribunal will also find that points can only be awarded for involvement with the Humane Society if an someone is an animal or similarly if someone is claiming points for involvement with the Cancer Society if they have Cancer.

Furthermore, it appears that the Tribunal have assesses the Appellant's involvement with this organisation on the basis that she was required to do so by her Supervisor. This is clearly contrary to the evidence from Wanda Ebanks who describes the Appellant as a "volunteer" but also the fact that Nicholas Bullmore is not connected with her employment.

44. It is therefore contended that the Defendant by failing to award the Appellant 20 points for Factor 5 has erred in Law or acted contrary to the Regulation.

Sufficiency of decision

45. In the decision, the Defendant has wholly failed to explain:

- i. On what basis they concluded that the Appellant's children were "accompanying her".
- ii. On what basis the Appellant's involvement with Kri Studios or Bailamos was not involvement with a Youth, Arts, or Sports Programme depending on the relevant facts.
- iii. How they concluded that Nicholas Bullmore had effectively "volunteered" the Appellant's services to CILPA.

46. The decision is insufficient in that its conclusions are sparse or non-existent. The Defendant fails to set out how it reached its conclusions on the relevant factors and therefore there must be a substantial doubt as to whether the Tribunal are applying a policy of their own or whether they have considered all the relevant factors. As such it is contended that the decision is insufficient which amounts to a further error of Law.

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