



COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2025

OF SECTION 23 (2) OF THE IMMIGRATION (TRANSITION) ACT (2022 REVISION)

OF ORDER 55 OF THE GRAND COURT RULES

IN THE MATTER OF AN APPLICATION FOR A RESIDENCY AND EMPLOYMENT RIGHTS CERTIFICATE
PURSUANT TO SECTION 38 (1) IMMIGRATION (TRANSITION) ACT (2022 REVISION).

JERMAINE KEVIN THOMAS

Appellant

-v-

CAYMAN STATUS AND PERMANENT RESIDENCY BOARD

1st Defendant

-and-

IMMIGRATION APPEALS TRIBUNAL

2nd 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 First Defendant dated 19 September 2023 was erroneous in law and, amounted to a breach of natural justice or unreasonable.
- ii. The decision of the Second Defendant dated 7 November 2025 was erroneous in law, unreasonable and/or a breach of natural justice.
- iii. The decision of the Second Defendant dated 16 October 2025 is quashed and is to be remade.

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

- iv. The matter be remitted to the Second Defendant for reconsideration in accordance with law and with Courts Judgment and for a *de novo* hearing to take place.
- v. The 2nd Defendant precluded as a matter of substantive legitimate expectation from relying upon the Appellant's overstaying between 6 March 2021 and his exit from the Cayman Islands on 28 April 2022 in any de novo hearing.
- vi. The costs, of and incidental to, this Application be paid by the Defendants.

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

1. Between 2015 and March 2021, the Appellant held a number of work permits with various employers in the Cayman Islands. Between 5 March 2021 and his departure on 28 April 2022, the Appellant was in the Cayman Islands without an immigration permission.
2. Prior to 2019, there was only one Immigration authority in the Cayman Islands and that was the Department of Immigration, led by a Chief Immigration Officer. The CIO's power were set out in the various Immigration Acts at that time and provisions contained within the Acts also set out the powers of the 1st and 2nd Defendant. Up until 2019, the CIO sat on the Board of the 1st Defendant.
3. In 2019, the Department of Immigration was split and its functions divided between Workforce Opportunities and Residency Cayman ("WORC") and Customs and Border Control ("CBC") and their respective Directors and Officers. The Defendants' powers in respect of this appeal remained the same.
4. During 2022-2023, both WORC and CBC came under the same Ministry, i.e. the Ministry of Border Control and Labour.
5. Officers of WORC and CBC have access to a computer system called IMSS in which relevant information is stored about expatriates in the Cayman Islands. It is also understood that the 1st Defendant's secretariat has access to the IMSS system.
6. In March 2021, the Appellant commenced working as a Mobile Car washer with an individual he knew as "Kenneth". The Appellant believed that Kenneth had taken out a work permit for him. This was not correct.
7. In late 2021, the Appellant became suspicious about the veracity of Kenneth and sought confirmation from the authorities that he had a work permit. The Appellant was informed that no such work permit was in existence.
8. By March 2022, it is understood that the authorities had started investigating the Appellant's status, i.e. his overstaying in the Cayman Islands.

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9. On 22 April 2022, the Appellant was served with a document signed by the Director of CBC. This document is entitled “Notice of Intent to issue a Removal Order” (“the Notice”).
10. The Notice warned the Appellant that he was subject to removal and at risk of being removed on 28 April 2022.
11. At the bottom of the Notice it states:

“Warning

If you are ordered removed, CBC is required to physically remove you from the Cayman Islands, and you will be declared a prohibited immigrant in accordance with Section 109(e) of the Act and be banned from returning.

If you leave voluntarily and before the final removal order, you will avoid having any negative annotations recorded on your immigration record which may impact any future immigration applications.” [emphasis added]

12. On 28 April 2022, acting in reliance upon the above, the Appellant left the Cayman Islands.
13. Despite the assurance contained above, it appears that negative annotations were recorded on his Immigration record, i.e. he had overstayed.
14. On 9 May 2022, a work permit application by Andrea Rivera T/A Super Clean Car Wash seeking to employ the Appellant was denied by WORC on the basis that it was not in the best interests of the community to grant the permit due to the Appellant’s overstaying.
15. On 15 July 2022, the Appellant was married to Andrea Rivera, a Caymanian.
16. On 24 September 2022, the Appellant applied for a Residency and Employment Rights Certificate (RERC) as the Spouse of a Caymanian. On 19 September 2023, this application was rejected on the basis that:
 - *Application for Residency and Employment Rights Certificate as a Spouse of Caymanian is Refused pursuant to Section 38(3)(c) of the Immigration (Transition) Act (2022 Revision).*
 - *The Board noted that the applicant violated the Immigration Law due to overstaying in the Islands for over twelve months.*
17. In an Appeal Statement dated 9 November 2023, but served on 27 November 2023, the 1st Defendant set out the facts which they sought to rely upon when deciding whether or not to grant the application. Those facts were:

- On 8 March 2022, a CBC Officer made a note in the Department's shared databased advising that the Appellant was under investigation for "overstaying".
- A further notation was placed in the CBC database which stated that "the Appellant was issued an "Intention to be removed" if he failed to depart. He was therefore advised to depart by 28 April 2022 and did so depart on even date".
- Various applications have been rejected by the Authorities.

18. The Board concluded that:

"In this particular case, the Board noted that the Appellant violated the Immigration Law by overstaying in the Islands for more than twelve months. Accordingly, the Board was of the view that this reflected poorly on the Appellant's character."

19. From the Appeal Statement, it does not appear that the 1st Defendant considered Section 38 (9) of the Immigration (Transition) Act (2022 Revision) ("the Act") which states that RERCS will be granted to the spouses of Caymanians who previously held certain immigration permissions, like a work permit, in the absence of exceptional circumstances.
20. Exceptional Circumstances is not defined in the Act and as far as the Appellant is aware there is no published "policy" which sets out how to assess whether circumstances are exceptional or not.
21. The Appellant appealed the decision to the 2nd Defendant and in a decision dated 7 November 2025 they rejected the Appellant's appeal.
22. Grounds of Appeal were submitted by the Appellant and in those Grounds the Appellant raised a number of issues as to why the Decision was erroneous in Law, unreasonable, contrary to natural justice. Those grounds included:
- i. The Appellant's factual basis for this overstaying.
 - ii. The Notice and the Appellant's reliance upon it.
 - iii. The Appellant was being considered as a prohibited immigrant, even though he is not one.
 - iv. The Appellant's family life and constitutional and ECHR rights.
23. In a decision dated 7 November 2025, the 2nd Defendant denied the appeal. In the decision, the 2nd Defendant set out 9 bullet points. These bullet points are a mixture of "facts" and "considerations".
24. In the conclusionary paragraph the 2nd Defendant states:

The Tribunal determined that no grounds had been established by the Appellant. In assessing the information that was before the Caymanian Status and permanent

Residence Board the decision to refuse the grant of permanent residence was not unreasonable, erroneous or contrary to the principles of natural justice.

25. The Appellant appeals this decision.

Grounds of Appeal

26. The Appellant contends that the decisions of the Defendants amount to an error of law, were unreasonable, or contrary to the rules of natural justice on the basis that:

- i. Both Defendant's appear to have relied upon negative annotations which were recorded on the Appellant's Immigration record. The Appellant had a legitimate expectation that no such negative annotations would be recorded against him. Thus rendering the decision unreasonable.
- ii. Neither the 1st nor the 2nd Defendant considered Section 38(9) of the Act.
- iii. Neither decision is sufficient.
- iv. The Defendants have misdirected themselves.

Unreasonable / Legitimate Expectation

27. The Appellant contends that both the decision of the 1st Defendant and 2nd Defendant rely upon negative annotations recorded on the Appellant's Immigration record, i.e. that the Appellant overstayed and therefore the decision is unreasonable and should be quashed.

28. The Appellant's appeal in respect to this section is not advanced upon the following basis:

- i. The Director of CBC in the Notice had the power to bind the Defendants or future decision makers who were exercising a power pursuant to an Immigration Act, as opposed to decision under the Customs and Border Control Act.

29. Rather the Appellant would contend that the promise the Director made was to ensure that No Negative annotations would be recorded against him and thus if there are "negative annotations" remaining of his Immigration record, this amounts to a breach of that promise and reliance upon those negative annotations would render the decision unfair.

30. The wording of the Director of CBC in the Notice is clear and unambiguous. Provided that the Appellant voluntarily left before a final removal order was made he "will avoid having any negative annotations recorded on [his] immigration record, which may impact any future immigration applications". In reliance on this notice the Appellant left prior to the issuing of a removal order.

31. Despite the above promise it appears that Native annotations have been recorded on the IMSS system. In the Appeal Statement, two such references are, i.e.:

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- The Reference to the fact that the Appellant was being investigated for overstaying which must appears to have been made on 8 March 2022.
 - The reference that Appellant was issued with a “Intention to be removed” which was added at a point which is not clear.
32. It is averred that where there is an unambiguous representation, and reliance upon that representation can be established, the burden shifts to the public authority to justify any frustration of the expectation by producing cogent evidence of an overriding public interest. Absent such justification, failure to honour the representation is unfair and constitutes an abuse of power. It is quite clear that neither the 1st nor 2nd Defendant have reached out to the Director of CBC to seek to obtain a justification for why negative annotations remain upon the Appellant’s Immigration record.
33. It is averred that as a requirement of procedural fairness,¹ it was incumbent upon the 1st Defendant (if they were aware of the wording of the Notice of Intent to issue a Removal Order) to seek clarity from the Director of CBC as to why the negative annotations remained upon the Immigration record of the Appellant. It appears that the 1st Defendant failed to do this thus potentially failing to ensure that the process that was being undertaken and therefore the decision they were about to make was procedurally fair.
34. Furthermore, at no point in time was the Appellant’s record disclosed to him, so that he could make representations about any negative annotation on this Immigration record.
35. With the disclosure of negative annotations, it is averred that the 1st Defendant should have:
- i. Proceeded on the basis that there were no negative annotations on the Appellant’s Immigration record and reached a decision without considering them and relying upon them; or
 - ii. Proceeded on the basis that all those members of the Board who had been provided with the negative annotations were potentially prejudiced and therefore either remitted the matter to a differently constituted Board or the Director of WORC; and
 - iii. Refer the matter to the Head of Work Permits, Cayman Status and Permanent Residence to issue ensure that the negative annotations were removed from the Appellant’s Immigration file so as to make sure that no future decision maker was to be prejudiced.
36. By failing to act in this manner it is averred that 1st Defendant acted unreasonably.

¹ A requirement under Section 19 of the BOR.

37. In regard to the 2nd Defendant it is averred that unlike the 1st Defendant who may not have known about the promise made by the Director of CBC, they were clearly made aware of it as it was provided to them with the Grounds of Appeal. It was therefore incumbent upon the 2nd Defendant to:
- i. Ascertain from the Director of CBC why the Negative Annotations had not been removed and then consider the appeal in light of any justification raised.
 - ii. Ascertain from the Board whether or not they were aware of the Notice and the promise contained therein and consider the appeal in light of their response.
 - iii. Absent any suitable justification from the Director of CBC or a cogent explanation from the Board as to why they proceeded in the manner that they did grant the Appeal on the basis the process was procedurally unfairly / contrary to the principles of natural justice.
 - iv. Ensure that a de novo hearing was to take place with a differently constituted Tribunal who were not aware of the negative annotations.
38. By failing to act in the above way, it is contended that the decisions of the Defendant's were contrary to the principles of natural justice and therefore amount to an error of Law.

Section 38(9) of the Act.

39. Section 38 (9) of the Act is clear and applies in respect to the Appellant. The Appellant had previously held a work permit and in those circumstances, it is only in exceptional circumstances that the Defendants should not grant an application pursuant to Section 38 of the Act.
40. In neither decision does the 1st Defendant nor the 2nd Defendant consider Section 38(9) of the Act or reference it at all. Neither Defendant states that the Appellants conduct was "exceptional" nor the facts surrounding his overstaying and the length of time were "exceptional". It is noticeable that neither the Appeal Statement nor the decision of 7 November 2025 mention the word "exceptional".
41. In the absence of considering Section 38(9) of the Act and finding that the behaviour of the Appellant amounted to "exceptional circumstances" it is averred that the Board have erred in Law and as such the decisions should be quashed and remitted.
42. Furthermore, in the event that the Defendants had considered the overstaying and applied an "exceptional circumstances" test they would have concluded that while the overstaying was unfortunate and even irresponsible, they would not have concluded that it satisfied such a high standard as "exceptional circumstances" should satisfy.

Misdirection

43. The Appellant's primary contention is that if the 1st Defendant was aware of the Notice and went on to consider the application and the negative annotations (which they clearly did) they should have directed themselves that they were not to rely upon those negative annotations and any reference to overstaying or follow the procedure as set out in paragraph 35 above. In the event that the 1st Defendant were aware of the Notice and this direction was not given and they did not consider the matter appropriate, it is the Appellant's position that they misdirected themselves, thus their decision amounts to an error of Law.
44. Even if the 1st Defendant was to entitle to consider the negative annotations (which are accepted) it is contended that the 1st Defendant has misdirected themselves in regard to the various factors set out in Section 38(3) of the Act. While it is clear that each factor in Section 38(3) is to be considered as is the Bill of Rights, it is averred that the mere fact that an applicant is not of "good" character is not sufficient to deny the application. It is averred that a balancing act of the various competing factors is necessary and this is something which the 1st Defendant has not done.
45. Of primary importance when considering and weighing upon potentially criminal behaviour it is necessary to consider a variety of factors such as:
 - i. The nature and seriousness of the alleged behaviour.
 - ii. The affect on the community and any potential victims.
 - iii. Any mitigation advanced by the application.
46. Neither Defendant appeared to have considered the Appellant's overstaying in this light. It appears from the decision of the 1st Defendant that they have concluded that merely because the Appellant has overstayed this means he is not of good character and as such the application should be rejected.
47. It is averred that this amounts to a misdirection in that character is only one of the relevant factors that should be considered and should be considered in light of paragraph 45 above and whilst serious criminality can be sufficient for an application to be rejected, i.e. in the case of serious assault, child abuse, sexual assault etc., it is only in a rare case should a non-conviction disposal be held sufficiently serious that a permission of the nature requested should be denied. Equally, a proportionality exercise should be carried out, something which the 1st Defendant do not seem to have done.
48. It does not appear that the 2nd Defendant have considered the Appellant's overstaying in light of paragraph 45 above either and therefore, it further appears that they have proceeded on the basis that a failure to satisfy the 1st Defendant that the Appellant is of

good character is sufficient for the application be denied. This fails to taken into account the nature and seriousness of the behaviour and as such amounts to a misdirection.

49. In the decision of the 2nd Defendant, it appears that if a proportionality exercise was undertaken (which is not accepted) the 2nd Defendant concluded it was proportionate not to grant the application on the basis that:

“The Appellant may appeal to Government in Cabinet for pardon and/ or the grant of a certificate for Residency and Employment Rights Spouse of a Caymanian”.

50. While it may be “technically” correct that the Governor, (not the Governor in Cabinet) may issue a pardon for an individual who is “concerned in” any offence², but neither the Governor nor the Cabinet can grant an RERC for a spouse of a Caymanian.
51. Section 38 of the Act is clear. The power to grant an RERC as the Spouse of a Caymanian, lies at first instance with the Director of WORC or the 1st Defendant and on appeal with the Second Defendant.
52. It is suspected that the 2nd Defendant could be referring to two different permissions. The first permission would be a permission granted under Section 26(1)(e) of the Act, which is the Right to be Caymanian by Grant of Cabinet. It is not clear why the Tribunal believes that this is a relevant consideration, considering the reasons for their rejection and the fact that the 1st Defendant would have to approve the application.
53. The second permission is one pursuant to Section 53(1)(b) of the Act. When considering this application, the Cabinet would have to carry out a proportionality exercise, as should have been done by both Defendants. It is not therefore clear that, if the relevant exercise had been carried out by the Defendants, why they believe that a different decision would be reached by a third tribunal.
54. It is therefore contended that the 2nd Defendant has either relied upon incorrect facts or taken into account irrelevant considerations and as such the decision should be quashed.

Sufficiency of decision

55. It is noticeable that both decisions are very brief. It is contended that there must be substantial doubt as to whether or not the 1st Defendant has considered all the relevant facts and applied the law correctly on the basis that:
- i. There is no mention of Notice, nor the promise contained within it nor why the 1st Defendant can justify their actions in relying upon information which should not be before them.

² Section 39 Bill of Rights.

- ii. There does not appear to be a consideration of the Appellant's offending nor the fact that he was not convicted of any offence.
 - iii. There is no mention of Section 38(9) of the Act.
 - iv. There is no mention by the 1st Defendant of carrying out a proportionality exercise.
 - v. There is no mention or reference to any case law.
 - vi. It appears from the decision that the 1st Defendant has proceeded on the basis that Section 38(3)(c) of the Act is determinative rather than one of the relevant considerations.
 - vii. There is no evidence that the 1st Defendant considered Section 9 of the Bill of Rights.
56. Similarly, it is contended that the 2nd Defendant's decision is insufficient in that:
- i. There is no reference to the Notice, nor the promise contained within it nor why the 2nd Defendant can justify their actions by relying upon annotations which should not be before them.
 - ii. There is no reference to Section 38(9) of the Act.
 - iii. It does not appear that the Board has carried out a proportionality exercise. While the Board have noted factors which could be seen as carrying out a quasi proportionality exercise and if they have, they have wholly fail to apply the findings of fact to the situation and explain why it is proportionate to require a Caymanian to leave the Cayman Islands.
 - iv. There is no reference to case law, in particular *Ellington v CIO* and *Dominguez v IAT*.
 - v. The 2nd Defendant has considered irrelevant / erroneous factors, i.e. the Appellant cannot apply to the Government in Cabinet for an RERC as they do not have the power to grant one.
57. Due to the insufficient decisions by both Defendants, it is contended that there must be substantial doubt as to whether the Defendants applied the correct legal test, applied the facts to the law correctly, failed to consider relevant matters and potentially considered irrelevant matters. As such it is contended that the decision should be quashed.

Conclusion

58. It is respectfully requested that the Honourable Court make the orders set out in paragraphs (i)-(vi) above.

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