IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

IN THE MATTER OF Section 23 (2) of the Immigration (Transition) Law 2018
AND IN THE MATTER OF Section 24 of the Cayman Islands Constitutional Order 2009

CAUSE NO G11 of 2020

BETWEEN

KEEBLE KEVIN KNIGHT

Appellant

and

IMMIGRATION APPEALS TRIBUNAL

Respondent

CAUSE NO G12 of 2020

BETWEEN

DEVON LLOYD JOHNSON

Appellant

and

IMMIGRATION APPEALS TRIBUNAL

Respondent

CAUSE NO G16 of 2020

BETWEEN

JUAN VICENTE GIRALDO SANCHEZ

Appellant

and

IMMIGRATION APPEALS TRIBUNAL

Respondent

CAUSE NO G25 OF 2020

BETWEEN

CHARLENE CASSANDRA SALMON

Appellant

and

IMMIGRATION APPEALS TRIBUNAL

Respondent

Appearances:	Mr. Dennis Brady for the Appellants
	Ms. Celia Middleton and Mr. Nigel Gayle, Crown Counsel, for the Respondent
Before:	Hon. Margaret Ramsay-Hale
Date of Hearing	10 March 2020
Date of Decision	10 March 2020
Written Reasons Delivered:	31 March 2020

HEADNOTE

Statutory Appeals - Appeal against decision of Immigration Appeals Tribunal - Appeals on point of law only

JUDGMENT

1. These four appeals raise the same challenge to the decision of the Immigration Appeals Tribunal ("IAT"). Counsel on both sides consented to the matters being heard together. G25 of 2020, which is the appeal of Charlene Cassandra Salmon is, on the face of it, out of time, but as it raises the same challenge to the decision of the IAT as the others, I have included it in my judgment for completeness.

2. At the Directions Hearing, the Crown argued that the appeals are an abuse of process and must be struck out, as under section 23(1) of the ***Immigration (Transition) Law*** **2018**, an appeal against a decision of the IAT can only be brought on a point of law and no arguable point of law was raised in the Notices of Appeal.

3. I agreed and dismissed the appeals with no order as to costs for reasons which I undertook to put in writing, which I do now.

Background

4. Each Appellant had made application under the relevant law for a grant of Permanent Residence ("PR") and each was refused by the Chief Immigration Officer then seized with considering the applications.

5. The system prescribed by the law for the grant of PR consists in the awarding of points to applicants as prescribed by Schedule 2 of the ***Immigration Regulations (2019 Revision)*** ("***the Regulations***"). It was common ground among the parties that, to be granted PR, an applicant had to attain a minimum score of 110 points.

6. Among the Factors to be considered by the Chief Immigration Officer is the occupation of the applicant - **Factor 1-** for which a maximum of 30 points may be assessed. The Schedule provides that for **Factor 1 (a),** which addresses the *current occupation* of an applicant, a maximum of 15 points may be awarded. **Factor 1 (b)** provides for a maximum additional 15 points to be awarded if the applicant is in a *priority occupation*.

7. The explanatory note to the Schedule states that,

> *"1. Cabinet in its discretion may publish a list of occupations specified as priority occupations.*
>
> *2. Where such a list is published, the Board or Chief Immigration Officer as the case may be, in considering an application for permanent resident under section 30, shall take such priority occupations into account."*

8. It was also common ground that Cabinet has not specified any priority occupations. In the result, no points were awarded to the Applicants by the Chief Immigration Officer with respect to this Factor 1(b).

9. Having gone through all the Factors set out in Schedule 2, the Chief Immigration Officer awarded Mr. Keeble Knight, a total of 93 points, Mr. Devon Johnson, 81 points, Ms. Charlene Salmon, 79 points and Mr. Juan Vincente Sanchez, 58 points. None of them having achieved the minimum threshold of 110 points, he refused their applications for PR.

10. The decision of the Chief Immigration Officer to refuse their applications for PR was appealed to the IAT, which upheld his decision.

The Grounds of Appeal and Relief sought

11. As best as I am able to summarise them, the appeals centered on the question of whether the Chief Immigration Officer erred in awarding zero points to the Appellants under Factor 1(b).The putative error of law alleged was that the Chief Immigration Officer considered and made an assessment of the priority of the Appellants' occupations and assessed zero points with respect thereto, despite there being no established list of priority occupations. The Appellants each asserted that had the Chief Immigration Officer properly exercised his discretion to award them points they *"could have qualified for the grant of permanent residency."*

12. The Appellants contended that the IAT erred in finding that the Chief Immigration Officer was right not to award points under Factor 1(b) as to do otherwise would be contrary to the Regulations and asked this Court to set aside the decision of the IAT and direct the Chief Immigration Officer to grant PR to the Appellants.

13. It is plain from a reading of the Chief Immigration Officer's Appeal Statement and the decision of the IAT, that no points were awarded under Factor 1(b) because no points were available for award, either to these or any other applicants, as the list of priority occupations has not been established by Cabinet. It follows then that Chief Immigration Officer was not exercising a discretion in assigning zero points under Factor 1(b).

14. The allegation that he made an error of law, either by referring to a non-existent list of priority occupations in deciding to award the Appellants zero points for their occupations or, conversely[1], by failing to take the Appellants' occupations into account and making an award of points in respect thereof [2], cannot be sustained. The appeals, therefore, raise no point of law that could found the Court's jurisdiction under section 23(1).

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[1] *"...consideration of and applying the terms of {Factor 1(b)}] was wrong in law. Principle and the rules of natural justice.": para 3 Notice of Appeal in G12 of 2020 Lloyd Devon Johnson IAT.*

[2] On behalf of Keeble Knight, it was alleged that the Chief Immigration Officer had a discretion to award points in excess of the 15 he awarded for Factor 1 (a) and *"had failed to recognize, and give credit, for [the Appellant's] multiplicity of skills"* in not awarding him more points. In the exchanges between Counsel and the Bench during the course of the hearing, Mr. Brady accepted that the maximum points available for Factor 1 Occupation is 30, 15 for Factor 1(a) and 15 for Factor 1 (b) and that the Chief Immigration Officer had awarded each applicant all 15 points available for Factor 1(a).

15. Further, it is clear that even if each of the Appellants had been awarded the maximum amount of points available under Factor 1(b), none of them would have reached the threshold of 110 points necessary for the grant of permanent residency, rendering an appeal based on these facts an exercise in futility.

16. The Appellants appeared to advance a further ground of appeal, asserting that they lost the opportunity to gain points, and thus qualify for PR, as a result Cabinet's failure to establish the list of priority occupations in breach of its *"legislative obligation to so"*. This ground sounds in judicial review as it relates to the lawfulness or otherwise of Cabinet's failure to establish the list of priority occupations. It does not raise a question in issue between the Appellants and the IAT, which is whether the Chief Immigration Officer made an error in law which the IAT failed to remedy.

17. For these reasons, the Notices of Appeal and the Notices of Motion filed in respect of the same appeals were struck out.

RAMSAY-HALE J

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