

3/7/07

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

CAUSE NO. 135 OF 2007

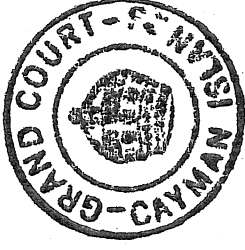
**IN THE MATTER OF THE IMMIGRATION LAW 2006 REVISION (AS AMENDED)
(SECTION 16, 17(1) & (2))**

**AND IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE
IMMIGRATION APPEALS TRIBUNAL**

Appearances: Mr. Scott Wilson of Diamond Law Associates for the Applicant
Ms. Reshma Sharma of the Government Legal Department for the
Respondent

Before: Hon. Justice Henderson

Heard: June 8, 2007



RULING

The claimant applied to the Work Permit Board ("the Board") for a work permit. After that permit was denied an appeal was brought to the Immigration Appeals Tribunal ("the Tribunal"). The amended notice of appeal set out a great many grounds of appeal, only one of which was successful.

After a relatively lengthy hearing, the claimant succeeded in convincing the Tribunal that there had been a denial of natural justice and procedural fairness at the Board level because of the Board's failure to disclose to the claimant certain affidavit material and a letter filed in opposition to the work permit application. Accordingly, the Tribunal allowed the appeal and remitted the matter to the Board for further consideration.

Initially, the Tribunal made no order as to costs. When requested to consider the costs issue and give its decision on the question, the Tribunal issued a short supplementary ruling which said:

"After due consideration, the Tribunal determined that there were no special circumstances in the case that warranted the exercise of its decision to award costs. The application for costs is therefore denied."

This appeal is brought by way of originating notice of motion from the refusal to award costs. The grounds advanced read in part:

"The defendant's decision is irrational or unreasonable. In the ordinary course, costs follow the event. The appeal was successful. The reason the Immigration Appeals Tribunal gave for its decision to hear the matter afresh is there had been a failure to give a fair hearing, and accordingly, a breach of natural justice. The reason given for not awarding costs was that there were no special circumstances in the case that warranted the exercise of the discretion to award costs. This is unreasonable. It is submitted that costs should be awarded to the successful party, unless there are special circumstances not to award costs. It is irrational that special circumstances should exist before costs are awarded. It is unclear what is meant by the phrase "special circumstances" and when if, at all, they would ever exist. The reason given for denying costs is vague, uncertain and arbitrary."

In addition, an argument was advanced, although only faintly pressed, that the claimant had a legitimate expectation of receiving an award of costs after having succeeded on the appeal. A free-standing ground advanced before me was that there was a failure to give adequate reasons for the decision on the costs question.

The *Immigration Law (2006 revision)* provides a broad and unfettered decision to the Tribunal to make orders for costs. Section 17(1) reads: "On an appeal, the Immigration Appeals Tribunal may

make such orders, including an order for costs, as it thinks fit." The Law contains no criteria governing awards of costs. Clearly, it is the intention of the Legislative Assembly that the entire matter be left in the discretion of the Tribunal.

I turn to the cases.

The criteria governing an award of costs by an administrative tribunal depend very much upon the nature and type of the hearing in question. Both parties have cited to me a number of cases which may be described collectively as "business licensing cases". I agree that these are analogous to the type of hearing conducted here; i.e., a hearing concerning the issuance of a work permit. I would not want my remarks to be taken as having application to administrative hearings which are fundamentally different in nature such as a hearing concerning a professional's right to practice his or her profession.

A number of English authorities arising from business licensing decisions have been cited. The following are particularly persuasive: *R v. Crown Court at Stafford ex parte Wilf Gilbert (Staffs) Ltd.*, [1999] 2 All ER 955 (Q.B.D.); *Bradford City Metropolitan District Council v Booth*, May 31, 2000 *Times Law Reports*, page 431, (Q.B. Div. Ct.); *R v Alex Nesting LTL* 2006 EWHC 1374 (Q.B.D.).

From these, and from the arguments presented by counsel, I draw the following conclusions.

First, there are no hard and fast rules. It would be wrong in principle to fetter the discretion given by the Legislative Assembly to the Tribunal and it would be equally wrong for the Tribunal to fetter its own discretion.

Second, the Tribunal has the power to award costs in favour of the Immigration Department and against the claimant as well as in favour of a claimant and to be paid by the Immigration Department.

Third, the discretion of the Tribunal applies to quantum as well as to the threshold question of whether to award costs at all.

Fourth, there is no need for the Tribunal to adopt a rule that costs always, or even usually, follow the event. Indeed, the adoption of such a mechanical rule without legislative authority for it might itself be seen as an undue fettering of the Tribunal's discretion.

Fifth, all of the relevant facts and circumstances should be considered on the question of costs.

Sixth, one important consideration is the likely financial prejudice to a successful party which is not awarded its or his costs.

Seventh, another important consideration is the need to encourage the public authority to make and stand by honest and reasonable administrative decisions without fear of exposure to undue financial prejudice.

Eighth, the fact that the authority has or has not acted reasonably and in good faith in the discharge of its public function is an important factor.

Ninth, an award of costs may be used to impress upon the Tribunal below the need to be scrupulous about procedural fairness and natural justice or, alternatively, to impress upon the claimant the need for reasonableness in the conduct of a hearing.

Finally, there must be evenhandedness. In the long run, a tribunal is expected to apply its evolved policy concerning costs even-handedly as between claimants and the authority in question.

With respect to the reasons given by this Tribunal for denying the claimant its costs, it must be said that they are insufficiently detailed to permit the claimant to know why such costs were denied.

There is no rule, and should not be any rule, that an award of costs depends upon the existence of “special circumstances,” whatever those may be. I do not mean to imply that a tribunal must always give elaborate reasons for granting or refusing an award of costs. The reasons may be brief, but they must be given in sufficient detail and with sufficient clarity to enable the claimant to understand, through proper legal advice, why the Tribunal reached the decision it did. These reasons do not attain that standard.

It would not be appropriate for this Court to substitute its discretion for that of the Tribunal on this question. The proper course, therefore, is to remit the case to the Tribunal for a fresh decision on the question of costs.

My order is that the appeal is allowed and the case is remitted to the Immigration Appeals Tribunal on the question of costs.

I turn to another costs issue, the costs of this application. My jurisdiction to award costs is, of course, governed by Order 55 of the *Grand Court Rules*. In this Court, costs will ordinarily follow the event although the Court has a broad discretion to depart from that. I see no reason in principle to depart from it in the present case. It is true that the question of costs is one of some importance and one upon which the Tribunal, through its attorney, has requested guidance. That is not enough to take it out of the usual class of case and deny the successful appellant its costs. I will award the costs of this appeal to the appellant.

Dated this 3rd day of July, 2007

Henderson, J.

Henderson, J.
Judge of the Grand Court

