

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

Cause No: G 0046/2016

BETWEEN:

APPLEBY (CAYMAN) LIMITED

PLAINTIFF

AND:

CHIEF IMMIGRATION OFFICER

DEFENDANT

Appearances:

Mr. Andrew Bolton of Appleby for the Plaintiff

Before:

Mr. Justice Seymour Panton

Heard:

14th June 2016

JUDGMENT



1. On 12 April 2016, I heard this application and on 15 April 2016, I indicated an intention to refuse it. However, before I had perfected the proposed order, I received a request from the Applicant to be allowed to make further submissions. I acceded to the request and on 14 June 2016 I was addressed further on the matter by Mr. Andrew Bolton.
2. This application is for leave to apply for judicial review of two decisions made by the Chief Immigration Officer (CIO). The Applicant is a firm of attorneys-at-law which had in its employ two attorneys who, according to the Applicant, “*resigned simultaneously on 4 June 2015 in a team move to work for (another firm of attorneys-at-law)*”. The Applicant is of the opinion that both attorneys were “in breach of their duties of good faith and loyalty.”
3. On 31 August 2015 the Applicant wrote to the Business Staffing Plan Board requesting that it “*take into account certain factors when deciding whether to grant (the attorneys) work permits to work for (the other firm) and to request that, pursuant to s.50 of the Immigration Law..., the Board not grant to each of them a permit to work for (the other firm)*”.
4. Initially, the work permit for attorney ‘A’ was refused. However, that decision was later reversed. There followed correspondence between the Applicant and the CIO. In a letter dated 27 October 2015, the Applicant requested that the CIO review his decision to grant the temporary work permit. In a response dated 7 December 2015, the CIO informed the Applicant that there would be no revocation of the permit. The Applicant is seeking to apply for judicial review of this decision.



5. Further correspondence passed between the CIO and the Applicant. Finally, for these purposes, the CIO on 21 February 2016 advised the Applicant that the temporary work permit granted to attorney 'B' would also not be revoked.
6. The application before me is for leave to apply for the following reliefs:
- i. A declaration that a notification under Regulation 9 of the Immigration Regulations (2015 Revision) does not result in a termination of the currency of the work permit for the purpose of s.50 of the Immigration Law (2015 revision);
 - ii. An order of mandamus to compel the CIO to reconsider his decision refusing to revoke the permit for attorney 'A'; and
 - iii. An order of certiorari to quash the decision of the CIO to grant a temporary work permit to attorney 'B'.
7. In the detailed submissions, made orally and in writing, the Applicant is saying that the CIO has breached s.50 of the Immigration Law; that there is no right of appeal, and that there is a prospect of success if the Applicant were to be given leave to apply for judicial review. According to the submissions, if judicial review is allowed and the order of certiorari granted, the CIO would have to reconsider whether there were special circumstances that warranted the exercise of his discretion.
8. In answer to a question that I posed, Mr. Bolton said that the Court should not pay too much attention to whether attorneys 'A' and 'B' have breached their contract with the Applicant. It is really, he said, a question of whether the CIO had the power to do what he did. The Court, he submitted, should not consider whether the applicant will succeed. It is whether there is a realistic, as opposed to a fanciful, prospect of success.



At the very least, he stressed, the matter is arguable. There is, he said, a clash between s.50 of the Law and Regulation 9. The decisions of the CIO, he continued, are tainted by an error of law, and the matter being a public interest matter, leave to apply for judicial review ought to be granted.

DECISION

9. Section 50 of the Law states that during the currency of a work permit, the holder of that permit may not change his employer unless the Board or the CIO believes that there are special circumstances. Section 2 of the law defines “special circumstances” as *including* a situation where-
- i. The position has become redundant;
 - ii. The worker is being victimized by the employer or by other employees of that employer;
 - iii. the employer has changed due to corporate action such as merger or amalgamation;
or
 - iv. the worker has been given written consent by his present employer.
10. In my opinion, the word “including” in the definition is very important. It indicates that the list is not exhaustive, and the CIO has been clearly given a discretion by the legislature.
11. Section 53 of the Law contains other provisions in respect of the grant of temporary work permits, and requires the CIO to have regard to the criteria in s.44(2)(a), (3) and (4) of the Law.



12. On my interpretation of the relevant sections, and based on the facts in the affidavit in support of the application, I do not see where the CIO has erred. In view of my interpretation, I do not see why leave should be granted for a challenge to be mounted in respect of the CIO's exercise of a discretion that the law gives him.
13. Recital of the record of Hansard is unhelpful in this situation. The wording of the legislation is clear and not in need of such aid. Legislators the world over have from time to time said one thing, yet legislated another. Where the language of the statute is clear, the words are to be given their natural meaning. In my view, if the legislature wishes to prevent situations such as the instant one, it must say in clear language that the CIO has no discretion, and list exhaustively the circumstances that the CIO should consider.
14. In the circumstances, I am refusing the application. It seems to me, and I express it quite humbly, that if attorneys 'A' and 'B' have breached their contracts with the Applicant, there is the remedy of a suit for breach of contract. This application seems to me to be an attempt, albeit unintentional, to involve the CIO in unnecessary and unwarranted litigation.

Dated this the 17th day of June 2016



Mr. Justice Seymour Panton
Acting Judge of the Grand Court

