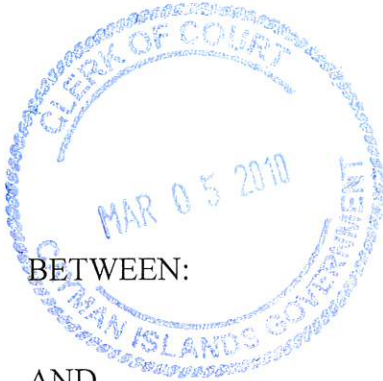


No. 53

Application for Leave to Apply for Judicial Review (0.53, r.3)

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

LEGAL AID; 8/10
CAUSE NO. 117 of 2010



In the matter of an application by Nadine Joy Banton for leave to apply for Judicial Review

And in the Matter of a decision dated 9 January 2009 made by the Immigration Appeal Tribunal for an Order of Declaration, Certiorari and an injunction

BETWEEN:

NADINE JOY BANTON


PLAINTIFF

AND

IMMIGRATION APPEALS TRIBUNAL

DEFENDANT

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant(s)	Nadine Joy Banton, Rock Hall, House 51A, Grand Cayman, Cayman Islands
Judgment, order, decision or other proceeding in respect of which relief is sought	Decision of the Chairwoman of the Immigration Appeals Tribunal is unfair and unreasonable as it does not set out the reasons for the decision
<p style="text-align: center;">Relief Sought</p> <p>Leave to apply to the Grand Court for the issue of a Declaratory order, certiorari and injunctive relief to quash the decision of the Immigration Appeals Tribunal for not providing reasons for its refusal to extend the time for filing grounds of appeal.</p>	
Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	Clyde H. Allen, Chambers, P, O Box 31076 SMB, 2nd Floor, Suite #9, Jack & Jill Building, 19 Fort Street, George Town, Grand Cayman, KY1-1205, Grand Cayman, Cayman Islands.
Signed 	Dated 5.3.10

GROUND ON WHICH RELIEF IS SOUGHT

1. That section 15 of the Immigration Law (2007 Revision) states:

“15. (1) Save as otherwise provided in this Law, any person aggrieved by, or dissatisfied with, any decision of a board other than a decision under section 14 may, within –

- a. twenty-eight days of the communication of the decision to him, or
- b. such longer period as the Chairman of the Immigration Appeals Tribunal may, for good reason shown, allow, appeal there from by way of rehearing to the Immigration Appeals Tribunal, and matters referred to the Tribunal may not be remitted to that board.

2. An appeal under subsection (1) may be lodged on the ground that it is-

- a. erroneous in law;
- b. unreasonable;
- c. contrary to the principles of natural justice; or
- d. at variance with the Regulations

3. Where the Immigration Appeals Tribunal sends notice of its decision to the appellant by post, such notice shall be deemed to have been communicated to the appellant at the time at which it should have been received by him in the ordinary course of post.


16. (1) Appeals under section 14 and 15 shall be by notice in writing addressed to the Secretary of the Board or of the Immigration Appeals Tribunal, as the case may be, and such notice-

- a. shall set forth –
 - (i) the decision against which the appeal is made;
 - (ii) whether or not the appellant wishes to be heard personally or by a representative; and
- b. shall be accompanied by a copy of the original application and in the case of an appeal to the Immigration Appeals Tribunal, by the prescribed non-refundable processing fee.

(2) On receipt of the notice of the appeal the Appellate Tribunal shall within fourteen days, notify the Chief Immigration Officer or the Board, as the case may be, of the decision against which the appeal is made.”

18. (1) Decisions made under or by virtue of section 7, 14, and 15 shall be deemed to be administrative and not judicial decisions and, subject to subsection 2, no person shall be required to, but at his absolute discretion may, give reasons for such decision.

2. The applicant was aggrieved by the decision of the Cayman Status & Permanent Residency Board and gave it to a representative to file an appeal against the decision on her behalf.
3. Amongst the reasons that would have been provided, the Applicant has a family member who lives here in the Cayman Islands and is unwell, recently suffering a stroke, and who she also looks after.
4. The representative of the Plaintiff failed due to ill health to file the appeal within the time stipulated.
5. The Plaintiff was completely unaware of the fact that the appeal document had not been submitted in time. The applicant on discovering this failure applied for an extension of time to file an appeal setting out what she considered was the good reason for failure to respond timeously.
6. The Chairperson of the Immigration Appeals Tribunal refused to grant an extension of time to file an application out of time. Having determined it was going to provide a reason, the adequacy of the reason falls to be tested by the same conditions as though it was obligatory. In such circumstances the Plaintiff contends that the reason provided is simply inadequate and thus in the circumstances unsatisfactory. It is simply not clear as the Plaintiff has filed a reason. Whether or not it is a good reason cannot be determined from the reason provided. It is not clear whether for instance, the Chairperson simply does not believe the contents of the affidavit or if she does believe it she does not consider it is a good reason. The reason given does not permit the Plaintiff to make a proper assessment as to whether to contest the decision.
7. The applicant sought to obtain a further clarification of the reason for the refusal by putting the Chairperson of the Immigration Appeals Tribunal on notice that the reason provided by it was not adequate and thus unsatisfactory. As at the time of lodging this application no reasons have been provided.
8. It is considered a breach of natural justice having provided a reason that any decision refusing to grant an extension out of time shall have in it a clear exposition of the grounds and thus reason for the refusal so that the Plaintiff can understand the basis for the refusal especially in a case such as this where the reason for failing to file the application was not as a result of the fault of the Plaintiff as the applicant is unable to determine whether the Tribunal acted reasonably when considering its application. The need to act fairly is particularly important especially where as here the decision directly impacts the rights of the Plaintiff where she has to leave the Islands within 14 days or such reasonable time as permitted thereafter.



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Clyde H. Allen, Chambers.

This Application was filed by CLYDE H. ALLEN, CHAMBERS, P.O. Box 31076, 2nd Floor, Suite #9, Jack & Jill Building, 19 Fort Street, George Town, Grand Cayman, KY1-1205, Cayman Islands, CHA@candw.ky