

IN THE GRAND COURT OF THE CAYMAN ISLANDS

412
CAUSE NO. of 2010

BETWEEN: THE QUEEN

AND: THE ATTORNEY-GENERAL OF THE CAYMAN ISLANDS

Respondent

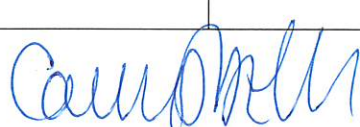
Ex parte (1) Balderamos Insurance Services Limited and (2) Annmarie Charran

Applicants

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	Balderamos Insurance Services Limited and Annmarie Charran c/o Campbells, Attorneys-at-Law 4 th Floor, Scotia Centre Albert Panton Street George Town Grand Cayman Aggrieved persons
Judgment, order, decision or other proceedings in respect of which relief is sought	The decision to refuse the 1 st Applicant's application for key employee status in respect of the 2 nd Applicant ("the Decision"), which application was made on 10 th March 2009, but which Decision was not (apparently) made by the Work Permit Board until a date unknown in June 2010 and not in fact communicated to the 1 st Applicant until about 20 th September 2010.
Relief Sought:	
1. An Order of <i>certiorari</i> in respect of the Decision 2. Declarations that the delay in making the Decision (approximately 15 months)	

<p>and/or in communicating the Decision to the 1st Applicant thereafter (a further 3 ½ months) were an unlawful abuse of process</p> <p>3. An order that the application be remitted to the Work Permit Board (or more properly the Business Staffing Plan Board) for reconsideration</p> <p>4. Damages</p> <p>5. Costs</p> <p>6. Such further or other relief as this Honourable Court thinks fit, including if and so far as may be necessary, an extension of time for making this application and the application for judicial review.</p> <p>AND a direction that this application for judicial review be expedited, and that a return date for the substantive hearing be set as soon as reasonably practicable together with all other consequential directions</p>	
<p>Name and address of the Applicant's attorneys</p>	<p>Campbells 4th Floor, Scotia Centre Albert Panton Street George Town Grand Cayman</p> <p>Ref: STM/KAH/sam/12655-17532</p>
<p>Signed </p>	<p>Dated: 8/11/2010</p>

GROUND ON WHICH THE RELIEF IS SOUGHT:

The delay in making the Decision (and then the further delay in communicating the Decision to the 1st Applicant) was so serious as to amount to an abuse of process and a denial of natural justice and have cause the Applicants irremediable prejudice such that the Decision is to be deemed unlawful as follows:

BACKGROUND

1. The 1st Applicant is an small independent insurance agent, carrying on business from premises at The Crighton Building, Crewe Road, Grand Cayman. The 1st Applicant acts as a direct agent for a number of major regional insurance

companies, and provides direct underwriting services to those companies for the purpose of providing insurance to clients in the Cayman Islands.

2. The 2nd Applicant is the 1st Applicant's senior underwriting staff member known as an "Insurance Technician". The 2nd Applicant is a national of Trinidad & Tobago, and has been employed by the 1st Applicant since about March 2003. The 2nd Applicant's "final" work permit was granted on 12th August 2008 (to run from 31st March 2009 to 31st March 2010) subject to payment of the renewal fee. The fee was paid by the 1st Applicant on 16th March 2009.
3. By a letter dated 10th March 2009 and supporting documents, the 1st Applicant applied for the 2nd Applicant to be granted key employee status under s.49(4) of the Immigration Law (2007 Revision) citing each of grounds 49(4)(a) to (e).
4. On 26th November 2009, the 1st Applicant submitted an application to the Business Staffing Plan Board for the approval of a Business Staffing Plan.
5. On 1st April 2010, the 1st Applicant paid a fee to the Immigration Department so that the 2nd Applicant could work under operation of law. The Immigration Department allowed a period until only 30th September 2010.
6. On 3rd September 2010, when the 1st Applicant had heard nothing concerning either its application for key employee status, or its Business Staffing Plan, the 1st Applicant wrote to the Business Staffing Plan Board (enclosing copies of the relevant documents) in the following terms:

"As it has become obvious that the original applicant has gone astray, please now give your favourable consideration to my application."

7. The 1st Applicant wrote a further letter to the Business Staffing Plan Board on 10th September, enclosing a cheque for CI\$250 in the following terms:

"It would appear that the original application may have gone astray, and this cheque is being sent in the event it has not been paid or lost."

8. A similar letter, and a further cheque, were sent on 13th September 2010.
9. By a letter dated 20th September 2010, the Work Permit Secretariat stated that the 1st Applicant's application for key employee status for the 2nd Applicant had been considered at a "recent" meeting, and was not approved. In fact, this was untrue, as the meeting had been held on or about 6th or 7th June 2010 and the meeting could not therefore be considered "recent."
10. Subsequently, the Immigration Department has:
 - (a) refused to reconsider the Decision
 - (b) refused to allow the 2nd Applicant to continue working under operation of law and
 - (c) required the 2nd Applicant to stop working for the 1st Applicant and
 - (d) refused to allow the 1st Applicant to submit a fresh application for key employee status, because the 2nd Applicant's final work permit has expired.
11. The matters set out in paragraph 10 above, in particular sub-paragraph 10(d) have caused the Applicant irredeemable prejudice. The Applicants will say that, if the relevant Board had considered the application for key employee status promptly and consistently with good governance and natural justice, the refusal would have been communicated to the 1st Applicant in time for the 1st Applicant to make a renewed application before the expiry of the 2nd Applicant's final work permit (i.e. on a date prior to 31st December 2009).
12. In the event, the Decision was (apparently) not made until June 2010 (well after the expiry of the final permit and nearly 15 months after submission of the application) and not communicated to the 1st Applicant until 20th September 2010, a delay of a further 3 ½ months, by which time, the 1st Applicant had lost the ability to make a renewed application under section 49 of the Immigration Law (2007 Revision), as it would have wished to do.

13. The 1st Applicant is now left in circumstances where the 2nd Applicant, who is the mainstay of the business, and on whom the director, a Caymanian who wishes to retire (he is aged 69, turning 70 in February 2011), depends for the continued prosperity of the business, must, unless a remedy is granted, leave the jurisdiction and her employment, in circumstances in which the business has never had a suitable (or any) Caymanian applicant for the 2nd Applicant's position when it has been advertised prior to the renewal of her work permit.

14. The 1st Applicant is a small business, employing 5 Caymanians (the director, his wife and daughter and 2 others) and 1 permanent resident with a right to work, all of whom may well suffer hardship if the 2nd Applicant, is not granted key employee status and forced to leave because of the likely downturn in business which will result from her departure.