

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

CAUSE NO. <sup>427</sup> 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**

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**NOTICE OF ORIGINATING MOTION**

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**TAKE NOTICE** that the Court at the Law Courts, George Town, Grand Cayman will be moved on .....2010 at 9.30am or as soon thereafter as counsel can be heard, by counsel on behalf of Balderamos Insurance Services Limited and Annmarie Charran for the following orders and relief, namely:

1. An orders of *certiorari* in respect a decision made by the Work Permit Board in or about early June 2010 refusing the 1<sup>st</sup> Applicant's application for key worker status in respect of the 2<sup>nd</sup> Applicant.
2. An order that the 1<sup>st</sup> Applicant's application be remitted to the Work Permit Board (or the Business Staffing Plan Board) for reconsideration.
3. Damages
4. Costs
5. Such further or other relief as this Honourable Court thinks fit.

**AND FURTHER TAKE NOTICE** that the grounds of this application are contained in the Memorandum of Grounds which is appended to this Notice of Motion.

Dated the    day of October 2008.

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**CAMPBELLS**, attorneys at law for the Applicant

TO:            The Clerk of the Court

AND TO:       The Attorney – General of the Cayman Islands

AND TO:       The Chief Immigration Officer

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

**CAUSE NO.464 of 2008**

**BETWEEN: THE QUEEN**

**AND: CARSON K. EBANKS, MBE J.P.**

**Respondent**

*Ex parte The Hon. Justice Alexander Henderson*

**Applicant**

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**MEMORANDUM OF GROUNDS**

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The delay in making the Decision (and then the further delay in communicating the Decision to the 1<sup>st</sup> 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 on the following grounds:

1. The 1<sup>st</sup> Applicant is a small independent insurance agent, carrying on business from premises at The Crighton Building, Crewe Road, Grand Cayman. The 1<sup>st</sup> 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 2<sup>nd</sup> Applicant is the 1<sup>st</sup> Applicant's senior underwriting staff member known as an "Insurance Technician". The 2<sup>nd</sup> Applicant is a national of Trinidad & Tobago, and has been employed by the 1<sup>st</sup> Applicant since about March 2003. The 2<sup>nd</sup> Applicant's "final" work permit was granted on 12<sup>th</sup> August 2008 (to run from 31<sup>st</sup> March 2009 to 31<sup>st</sup> March 2010) subject to payment of the renewal fee. The fee was paid by the 1<sup>st</sup> Applicant on 16<sup>th</sup> March 2009.

3. By a letter dated 10<sup>th</sup> March 2009 and supporting documents, the 1<sup>st</sup> Applicant applied for the 2<sup>nd</sup> 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 26<sup>th</sup> November 2009, the 1<sup>st</sup> Applicant submitted an application to the Business Staffing Plan Board for the approval of a Business Staffing Plan.
5. On 1<sup>st</sup> April 2010, the 1<sup>st</sup> Applicant paid a fee to the Immigration Department so that the 2<sup>nd</sup> Applicant could work under operation of law. The Immigration Department allowed a period until only 30<sup>th</sup> September 2010.
6. On 3<sup>rd</sup> September 2010, when the 1<sup>st</sup> Applicant had heard nothing concerning either its application for key employee status, or its Business Staffing Plan, the 1<sup>st</sup> 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 1<sup>st</sup> Applicant wrote a further letter to the Business Staffing Plan Board on 10<sup>th</sup> 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 13<sup>th</sup> September 2010.
9. By a letter dated 20<sup>th</sup> September 2010, the Work Permit Secretariat stated that the 1<sup>st</sup> Applicant’s application for key employee status for the 2<sup>nd</sup> 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 6<sup>th</sup> or 7<sup>th</sup> June 2010 and the meeting could not therefore be considered “recent.”
10. Subsequently, the Immigration Department has:

- 10.1. refused to reconsider the Decision

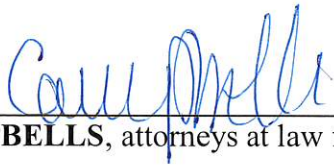
- 10.2. refused to allow the 2<sup>nd</sup> Applicant to continue working under operation of law and
- 10.3. required the 2<sup>nd</sup> Applicant to stop working for the 1<sup>st</sup> Applicant and
- 10.4. refused to allow the 1<sup>st</sup> Applicant to submit a fresh application for key employee status, because the 2<sup>nd</sup> Applicant's final work permit has expired.
11. The matters set out in paragraph 10 above, in particular sub-paragraph 10.4 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 1<sup>st</sup> Applicant in time for the 1<sup>st</sup> Applicant to make a renewed application before the expiry of the 2<sup>nd</sup> Applicant's final work permit (i.e. on a date prior to 31<sup>st</sup> 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 1<sup>st</sup> Applicant until 20<sup>th</sup> September 2010, a delay of a further 3 ½ months, by which time, the 1<sup>st</sup> 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 1<sup>st</sup> Applicant is now left in circumstances where the 2<sup>nd</sup> 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 2<sup>nd</sup> Applicant's position when it has been advertised prior to the renewal of her work permit.
14. The 1<sup>st</sup> 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 2<sup>nd</sup> Applicant, is not granted key employee status and forced to leave because of the likely downturn in business which will result from her departure.

15. The Applicants will rely on (*inter alia*):

15.1. **ex p. Calveley** [1986] QB 424 and

15.2. **ex p. Merrill** [1989] 1 WLR 1077



**CAMPBELLS**, attorneys at law for the Applicant

**Dated 23<sup>rd</sup> November 2010**