

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION



In the Matter of Grand Court Rule, Order 55 rule 1 and the Immigration Law Section 17 (2)

And in the Matter of The Appeal of Radford Hoybia Gabato under the Immigration Law (2009 Revision)

Between:

RADFORD GABATO

Appellant

IMMIGRATION APPEALS TRIBUNAL

Respondent

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on  
at or as soon thereafter as counsel can be heard, by counsel on behalf of Radford  
Hoybia Gabato for the following relief:

1. That the decision of the Immigration Appeals Tribunal dated 29 July 2009 to refuse Radford Hoybia Gabato permanent residency be overturned.
2. That the Appeal against the decision of the Caymanian Status and Residency Board dated 13 March 2008 to refuse Radford Hoybia Gabato permanent residency be allowed.
3. Such further and other relief that the Court deems fit.

And for an order that the costs of and incidental to this appeal may be paid by The Attorney General.

AND FURTHER TAKE NOTICE that the grounds of this appeal are:

A. Background

1. On the 19<sup>th</sup> April 2006 the Appellant applied to the Cayman Islands Caymanian Status and Permanent Residency Board ('The Board') for Permanent Residence in the Cayman Islands.
2. At the time of filing of his application the applicable legislation in force was the Immigration Law (2003) Revision ('the Law') and the Immigration Regulations (2004) ('the Regulations').
3. On the 13<sup>th</sup> March 2008 the Permanent Residency Board heard and refused such application on the basis of his failure to score sufficient points under the 'points system' to qualify as required by Section 30(4) of the Immigration Law (2007 Revision). Such points system requiring a minimum of 100 points and the appellant scored 62 points.
4. The criteria set out in the points system are contained in the Second Schedule of the Regulations.

5. On the 8<sup>th</sup> April 2008 the Appellant filed an Appeal against that decision and on the 16<sup>th</sup> October 2008 the Grounds of the Appeal were filed with the Immigration Appeals Tribunal ("IAT") setting out various aspects in which it was contended by the Appellant that the Board had (a) misdirected itself as to the law and (b) had unreasonably failed to take into account information received from the Appellant in support of his application.
6. On or around the 29<sup>th</sup> July 2010 the Immigration Appeal Tribunal considered the Appeal of the Appellant filed on the 8<sup>th</sup> April 2008 against a decision of the Permanent Residency Board ('The Board') to refuse the Appellants application for permanent residency on the basis of insufficient points.
7. By way of letter dated 29<sup>th</sup> July 2010 the IAT set out the written reason for their decision to dismiss the appeal. The reason being that subsequent to the re-hearing, the Appellant had again failed to score sufficient points under the points system. The IAT reheard the matter and awarded the appellant a further 30 point under the points system. This left the appellant on 92 points and still short of the mandated 100 points minimum thereby resulted in dismissal of the appeal.

#### Points System

1. The said 'Points System' as set out in the Regulations is separated into 8 categories from which the minimum number of 100 points can be scored.
2. The IAT considered and reviewed only 4 categories, those being:
  - (a) Knowledge and Experience
  - (b) Funds and Salary
  - (c) Contribution to Community
  - (d) Close Caymanian Connections

#### B. Grounds

1. The IAT failed to conduct a rehearing of the following categories under the Points System and as a result it misapplied or misunderstood the law:
  - i. Occupation
  - ii. Skills
  - iii. Financial Assessment
  - iv. Test

#### Particulars

- 1.1 That the Immigration Appeals Tribunal erred in law by not following the Points System scoring system as contained in the second Schedule of The Immigration Regulations, 2004 in the following respects:

- (a) They failed to give points in accordance with the Employment Relations Department database in relation to the Appellants Occupation.
- (b) They failed to give the Appellant points in accordance with his technical qualifications and certificates as presented to the Tribunal and failed to give appropriate points for his experience.

**1.1 (a) Occupation**

- 1. There is no evidence that the IAT reviewed the Employment Relations Database for Occupations for either by way of reference to the 2008 database or the 2010 database. Reference to such database is a mandatory requirement in accordance with the explanation to the Points System as set out in the Second Schedule of the Immigration Regulations 2004.

**1.1 (b) Technical Qualifications and experience**

- 1. The Appellant submitted to both the Board and the IAT qualifications and certificates awarded in his field of expertise and proof of his length of experience in his field.
  - 2. The IAT, in accordance with their duty under the explanation to the Points System as set out in the Second Schedule of the Immigration Regulations 2004 had to award a point to the Appellant for every year of employment in his field of trade. The IAT failed to award him a point for his period of employment from April 1991 to May 1992 as an electrician as stated in a letter dated 24<sup>th</sup> June 1992 by his previous employer and placed before the IAT.
  - 3. The IAT had a further duty under the explanation to the Points System as set out in the Second Schedule of the Immigration Regulations 2004 to award points for technical qualifications or certificates awarded to the Appellant in the Appellant's field of trade.
  - 4. The IAT failed to do so and erred in law by the failure.
- 1.2** Had the IAT reheard the matter fully and awarded points accordingly the Appellant would have been awarded sufficient points so as to succeed on appeal by gaining in excess of 100 points.

2. The IAT reviewed the points awarded in relation to the points awarded for the appellant's Close Caymanian connections in accordance with the Regulations. Despite so doing the IAT erred in law by failing to follow the Regulations.

Particulars

- 2.1 This point's category carries a maximum of 60 points. The Board awarded 0 points despite the Appellant providing proof of a Caymanian uncle. On appeal the IAT awarded 15 points out of 60.
- 2.2 The explanation to the Points System as set out in the Second Schedule of the Immigration Regulations 2004 states as follows:
- 8(iii) "A person whose brother, sister aunt, uncle, grandparent or grandchild is a Caymanian will be allotted fewer points." (than 60)*
- 2.3 It is inferred from the Immigration Regulations (2007 Revision) that the points to be allocated for a Caymanian uncle are 50% of the total available.
- 2.4 The IAT failed to apply the proper points available for possessing a Caymanian uncle in accordance with accepted practice and procedure in existence in 2006. In their failure to do so the IAT misapplied the law.
- 2.5 Furthermore had they done so the Appellant would have been awarded sufficient points so as to succeed on appeal by gaining in excess of 100 points.

Dated the <sup>13</sup> day of April 2011.

Samson & McGrath

Samson & McGrath  
Attorneys at law for the Appellant

TO: The Clerk of the Court  
AND TO: Attorney General's Chambers

This Notice of Originating Motion was issued by Samson & McGrath, Attorneys At Law, 5<sup>th</sup> Floor, Genesis Building, George Town, Grand Cayman.