IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: 195 OF 2012
LACV 0206 of 2011

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 Gloria Merlena Thomas under the Immigration Law (2010 Revision)

BETWEEN: GLORIA MERLENA THOMAS APPELLANT

AND: THE IMMIGRATION APPEALS TRIBUNAL RESPONDENT

GRAND COURT CAYMAN ISLANDS

CLERK OF COURT APR 13 2012 CAYMAN ISLANDS GOVERNMENT

NOTICE OF ORIGINATING MOTION

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

1. That the decision of the Immigration Appeals Tribunal dated 20th June 2011 to refuse Gloria Merlena Thomas permanent residency be overturned.
2. That the Appeal against the decision of the Caymanian Status and Residency Board dated 9 March 2009 to refuse Gloria Merlena Thomas permanent residency be allowed.
3. Such further and other relief that the Court deems fit.

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

A. Background

1. On the 17th October 2006 the Appellant applied to the Cayman Islands Caymanian Status and Permanent Residency Board ('The Board') for Permanent Residence in the Cayman Islands.

2. On the 21st February 2009 the Permanent Residency Board heard and refused such application on the basis of the Appellant's failure to score sufficient points under the 'points system' to qualify as required by Section 30(1) of the Immigration Law (2007 Revision) as read with Schedule 2 of The Immigration Regulations (2007 Revision). Such points system requiring a minimum of 100 points and the appellant scored 80 points.

3. The Appellant was awarded zero points under the category of 'Close Caymanian Connections' despite having stated on her initial application that she had a Caymanian sister.

4. The Appellant contacted the Department of Immigration in August 2009 and was advised that her application had been refused by the Board. Not having received written confirmation of the decision, the Appellant attended the Department of Immigration to collect a copy of the decision letter which was dated 9th March 2009. The Appellant was given a file copy of the letter on 12th August 2009.

5. The Appellant had to seek leave to appeal out of time against the decision of the Board. The Appellant filed her appeal (with an affidavit explaining the delay) on 20th August 2009.

6. On 20th November 2009 the Respondent Tribunal received an Appeal Statement outlining the Board's reasons for refusal of the Appellant's application. The Respondent sent a letter to the Appellant dated 22nd January 2010 enclosing the Appeal Statement and stating that, "Pursuant to the Immigration Law (2009 Revision) a detailed grounds of appeal may be submitted for further consideration. These documents should be received within 28 days of the date of this letter..." The Appellant states that she received this letter more than 28 days after the 22nd January 2010.

7. The Respondent wrote to the Appellant on 20th June 2011 dismissing her appeal on the basis that no grounds of appeal had been filed or served in accordance with section 15(2) and 16(4) of the Immigration Law (2010 Revision). The letter confirming the Respondent's decision was received by the Appellant on 8th August 2011.

8. In a letter via her attorneys dated 14th September 2011 the Appellant subsequently provided the Respondent with proof of her Caymanian sister in the form of a birth certificate and Status certificate.

9. Following the grant of a legal aid certificate, the Appellant filed an Originating summons on 21st November 2011 seeking an extension of time to file an appeal to the Grand Court. On 30th March 2012, Hon. Justice Panton made an order granting an extension of time for the Appellant to file her appeal pursuant to section 17 (2) of the Immigration Law (2011 Revision).

B. Grounds

1. The Respondent Tribunal misapplied or misunderstood the law by assessing the Appellant under the points system as opposed to applying section 30 (2) of the Immigration Law (2010 Revision).

Particulars

1.1 The Appellant's appeal was heard by the Respondent Tribunal on 9th June 2011. The relevant Law in force at that time was the Immigration Law (2010 Revision) ('The Law').

1.2 Section 16 (7) of the Law provides that, "Appeals to the Immigration Appeals Tribunal shall be by way of rehearing." Section 16 (8) provides that, "The Immigration Appeals Tribunal, when hearing an appeal, may take into account fresh evidence and any change in circumstances that may have arisen in relation to the parties."

1.3 Pursuant to section 30 (2) of the Law, "Where a worker falls within section 52(4)(d) and his period was fifteen years or more and he has applied for a grant of permanent residence under this section he shall, in the absence of exceptional circumstances, be granted permanent residence by the Board."

1.4 Section 52 (4)(d) of the Law provides, " Where at the 1st January, 2004 a worker has worked in the Islands continuously for any of the periods referred to in this subsection or did subsequently complete such period after the 1st January, 2004 taking into account the last work permit granted to him prior to that date to the extent not cancelled or otherwise determined and any period of time he may have spent as an employee of the Government of the Islands, then he may, if application is made for the grant or renewal of further work permits for or by him, and at the discretion of the Board or the Chief Immigration Officer, be granted work permits for the following additional periods to commence immediately upon the expiration or other determination of the work permit in force on the 1st January, 2004- (d) where the period was eight years or more, a period expiring no later than the 31st December, 2006."

1.5 The Appeal Statement provided by the Board to the Respondent Tribunal stated that the Appellant "had been legally and ordinarily resident in the Islands for a continuous period since 1996." Immigration records show that the Appellant entered the Islands on 26th January 1996 and held continuous work permits for the period 4th October 1996 until 2nd November 2006. The Appellant started 'working by operation of the law' on 19th March 2007 and has continued to be resident in the Islands to present.

1.6 At the time of the rehearing by the Respondent Tribunal on 9th June 2011, the Appellant had been resident in the Islands for a period of over 15 years and 5 months.

1.7 In all the circumstances, the Appellant should not have been assessed by the Respondent Tribunal under the 'points system' and in the absence of exceptional circumstances she should have been granted as of right her application for permanent residency.

1.8 The Respondent Tribunal erred in law therefore in applying the points system and failing to apply section 30(2) of the Law.

2. The Respondent Tribunal failed to take into account and/or resolve conflicts of fact or opinion on a material matter.

Particulars

2.1 The Respondent Tribunal erred in law by failing to take into account and/or resolve the issue of whether or not the Appellant did in fact have a Caymanian sister thus denying the Appellant a fair hearing of the matter.

2.2 The Appellant stated on her original application dated 17th October 2006 that she had a Caymanian "sister, brother-in-law and nephew".

2.3 The Appellant did not receive and was not aware of any requests for evidence of her Caymanian connections from the Board until after the Board made their decision to refuse her application.

2.4 The Respondent Tribunal failed to make further reasonable enquiries to determine whether the Appellant had in fact a Caymanian sister and the Appellant was not afforded adequate opportunity to provide evidence of her Caymanian sister. As a result, the Respondent failed to award the Appellant points in accordance with her Close Caymanian Connections pursuant to the Second Schedule of the Immigration Regulations (2010 Revision).

2.5 The 'Close Caymanian Connections' points category carries a maximum of 100 points. Pursuant to 8 (c) to the Second Schedule of the Immigration Regulations (2010 Revision), "An applicant who is the brother, sister or grandparent of a Caymanian" is entitled to 20 points. The Appellant was awarded zero points despite having a Caymanian sister.

2.6 Given that the Appellant already had 80 points, the issue of the Appellant's Caymanian sister was a crucial one and in exercising its statutory duties in good faith, the Respondent Tribunal should have taken reasonable steps to specifically request proof of the Appellant's Caymanian sister.

3. The Respondent Tribunal committed or permitted procedural or other irregularities capable of making a material difference to the outcome or the fairness of the proceedings.

Particulars

3.1 The Respondent erred in law by committing and/or permitting a procedural irregularity by failing to advise the Appellant in writing or otherwise regarding the procedure for conduct of appeals.

3.2 The Appellant did not receive a copy of the Board's refusal letter dated 9th March 2009 and she collected a file copy herself from the Immigration Department on 12th August 2009. The letter stated that 'Copies of the relevant sections of the Immigration Law (2007 Revision) are attached'. The file copy did not have the attachment referred to.

3.3 The Appellant was not therefore at any stage provided with a copy of section 16 of the Immigration Law (2007 Revision) or any other guidance regarding the conduct of appeals by the Board or the Respondent. At all material times the Appellant was without the benefit of any legal or other professional representation.

3.4 The Respondent erred in law by failing to remedy the Board's failure to advise the Appellant of the procedure for conduct of appeals and by its own failure to so advise the Appellant.

3.5 The first time that the Appellant became aware of any requirement to submit grounds of appeal and any applicable timeframe was when she received the letter from the Respondent dated 22nd January 2010 stating that, "Pursuant to the Immigration Law (2009 Revision) a detailed grounds of appeal *may* be submitted for further consideration. These documents should be received within 28 days from the date of this letter...".

3.6 The letter makes no reference to and provides no copy of the relevant section of the Immigration Law regarding conduct of appeals.

3.7 The use of the word 'may' by the Respondent was inaccurate and misleading for the Appellant. Section 16 (4) of the Immigration Law (2009 Revision) reads, "The appellant *shall,* within twenty-eight days of receipt of the reasons...file his grounds of appeal with the Board or the Immigration Appeals Tribunal...". The Law makes the filing of grounds of appeal obligatory rather than discretionary.

3.8 The Respondent erred in law in failing to appropriately advise the Appellant regarding the statutory requirement to file grounds of appeal.

3.9 The letter dated 22nd January 2011 was received by the Appellant more than 28 days after the date displayed on the letter resulting in further confusion to the Appellant.

3.10 At all material times the Appellant believed that she would have an opportunity to appear before the Respondent Tribunal and provide evidence of her Caymanian sister before the Tribunal made their final decision.

3.11 The failures on the part of the Respondent outlined above are contrary to the principles of natural justice and impacted upon the outcome and/or fairness of the proceedings in that had the Appellant been appropriately advised regarding the procedure for conduct of appeals, she would have provided the Respondent with her grounds for appeal including proof of her Caymanian sister.

3.12 The Respondent would then have had a duty to award the Appellant 20 points in accordance with the Immigration Regulations (2010 Revision), thus taking her total to 100 points under the points system and attaining the total required for permanent residency.

Dated the 17 day of April 2012

Filed the day of April 2012

Samson & McGrath
Attorneys at law for the Appellant

TO: The Clerk of the Court

AND TO: The Attorney General's Chambers
Attorneys at law for the Respondent

This Notice of Originating Motion was filed by Samson & McGrath, Attorneys At Law, 5th Floor, Genesis Building, George Town, Grand Cayman