

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE 469 2012

IN THE MATTER OF THE IMMIGRATION LAW (2011 REVISION)

**AND: IN THE MATTER of an Application by MANOLO DE LA PENA VALLO against the refusal by the Chief Immigration Officer to permit the re-taking of the mandatory English Test**

**AND: IN THE MATTER THE CAYMAN ISLANDS CONSTITUTION ORDER 2009 pursuant to an Application by MANOLO VALLO prohibiting expulsion**

**AND IN THE MATTER OF AN APPLICATION by MANOLO VALLO application for Judicial Review pursuant to Order 53 of the Grand Court Rules**

**BETWEEN:**

**MANOLO DE LA PENA VALLO  
AND  
PAUL ANDREW RAMOON**

**FIRST APPLICANT  
SECOND APPLICANT**

**AND:**

**CHIEF IMMIGRATION OFFICER  
AND  
THE HONOURABLE ATTORNEY GENERAL**

**FIRST RESPONDENT  
SECOND RESPONDENT**



**EX PARTE APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**TO:** The Clerk of Courts, Law Courts, George Town, Grand Cayman, Cayman Islands.

**1. THE APPLICANT**

The First Applicant is a native of the Philippines. He arrived for the first time to work in the Cayman Islands in March of 2005 as a Landscaper. His employer at the time was Mr. Marvin Watson of Palm Landscaping. He worked with Mr. Watson for one year and then he transferred to work for Junior Fraser of Reliable Landscaping. The Applicant worked in that position for a total of three months, following which, and due

to domestic matters back in his home country he left the Cayman Islands and returned to his native Philippines, around July of 2006. The Applicant remained away from the Cayman Islands for a total period of approximately six years. Whilst he was away from the Cayman Islands, Mr. Paul Ramoon applied for and was granted a work permit on his behalf. This permit was issued June 12 2012. As a result, the Applicant booked his passage to travel back to the Cayman Islands and commenced his journey on the 7<sup>th</sup> or 8<sup>th</sup> day of September 2012. The Applicant was travelling a total of four days, as he was delayed in Bangkok , while the authorities there confirmed his documents and travel documents were in order The Applicant arrived in the Cayman Islands on September 11 2012. He was asked to do the mandatory English Test. The test was twenty one questions and the Immigration Officer who administered the test said the Applicant got 14.5 correct, which amounted to 65%. The Officer told the Applicant, that he must get eighty percent on the test, so the Applicant should call his boss to get him a ticket to go back to the Philippines. The Applicant was very tired mentally when he arrived in Cayman because he had been travelling for four days. The Applicant and his boss Mr. Ramoon expressed to the Immigration Department, a request to do this test again, but they have refused, and said the Applicant should tell his boss to buy him a ticket for him to return to the Philippines, or risk being arrested and deported.

## **DECISION IN RESPECT OF WHICH RELIEF IS SOUGHT.**

- 1.0 The decision of the Chief Immigration Officer, to not permit the First Applicant's retaking of the mandatory English Test, on the basis that the policy of the Department is to only allow resits in exceptional circumstances and that this case did not fit the exceptional circumstances category.
- 1.1 The decision of the Chief Immigration Officer which stipulates that if the First Applicant does not voluntarily depart the Cayman Islands the First Applicant will be arrested and expelled.
- 1.2 The declaration by the Chief Immigration Officer that once the First Applicant has left the Cayman Islands whether of his own volition or by the actions of the Department of Immigration, there was no point in re-applying for a work permit for the First Applicant as it will be denied because of the position taken by the Portfolio of Internal/External Affairs in relation to the current matter.

## **2. RELIEF SOUGHT**

- 2.0 A Declaration that the Respondent whether by his servants, agents or otherwise, be restrained and prohibited from any and all action pursuant to the provisions of section 13(2) and (2) (a-c) of the Cayman Islands Constitution Order 2009, the objective of which is to proceed to expel the First Applicant from the Cayman Islands.

- 2.1 A Declaration that the First Applicant be given the protection afforded by section 13(2) (d)(iii) and 13(3)( a-d) of the Cayman Islands Constitution Order 2009.
- 2.2 A Declaration that the Respondent whether by his servants, agents or otherwise, be restrained and prohibited from any and all actions the objective of which is the detention of the First Plaintiff under any provision of the Immigration Law (2011 Revision)
- 2.3 A Declaration that the Respondent whether by his servants, agents or otherwise, be restrained and prohibited from any and all actions the objective of which is the detention of the Second Plaintiff, under any provision whatsoever of the Immigration Law (2011 Revision) in relation to this matter.
- 2.4 A Declaration that the Respondent permit the First Applicant to re-take the mandatory English test which is administered by the Respondent;
- 2.5 That this Order shall have effect from the date of its service on the Respondent;
- 2.6 The Respondent shall have liberty to apply to vary or set aside the terms of this order on two (2) days notice to the Applicant's attorney;
- 2.7 Such further, consequential, or other relief as this Honourable Court seems just;
- 2.8 Costs

**THE GROUNDS UPON WHICH RELIEF IS SOUGHT:**

**3.0 SUMMARY OF GENERAL FACTS.**

- 3.1 The detailed facts are set out and verified in the Affidavit in Support, of Manolo Vallo and Paul Ramoon, sworn on the 21<sup>st</sup> day of November 2012.
- 3.2 The Applicant worked previously in the Cayman Islands for one year and three months.
- 3.3 During the years that he was working in the Cayman Islands, he applied for, was tested and proven competent to drive. As a result, he was issued a group three (3) Drivers Licence. He had to do a written test and drive, in order to obtain this said licence.

3.4 When he arrived on September 11 2012, he was asked by the Immigration Officer if he wished to take the exam then. He said yes because he didn't want to have to return to do it, plus he had worked in Cayman before, and was confident that he could speak and write English sufficiently.

3.5 When he first came to work in the Cayman Islands, he did not have to take an English Test, and during the period that he worked here, he held work permits for two different employers.

3.6 He paid US\$1,800.00 for his airfare to come to work, and this money he borrowed from a friend and he is expecting it back. This sum is a significant amount of money in the Philippines.

3.8 The Applicant was allowed a telephone call to the Second Applicant and he came to get the Applicant from the airport. The First Applicant told him that the Immigration Officer said he failed the test and that the Second should get the First Applicant a ticket to return to Philippines.

3.9 The Second Applicant made it known to the First Applicant, that he had no money. The First Applicant also didn't have any money, as his plan had been to work and get this money back to pay to his friend, and in addition the ticket he had travelled to the Cayman Islands on, was a one way ticket.

3.9 The First Applicant does not have anyone in the Cayman Islands who could give him or lend him this money, and is subsisting off handouts from the Second Applicant.

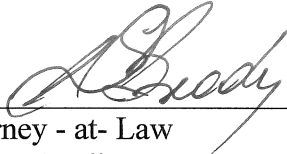
#### **4.0 GROUNDS FOR JUDICIAL REVIEW**

4.1 The decision of the Chief Immigration Officer to not allow the First Applicant to resit the English Test is in the peculiar circumstances of this case is inconsistent with the observance of Wednesbury reasonableness and should be set aside

4.2 The Chief Immigration Officer fettered her discretion by not permitting the First Applicant to resit the English Test in all the peculiar circumstances of this case.

4.3 The Chief Immigration Officer failed to take into account relevant considerations as submitted by the First and Second Applicant in relation to the First Applicant's antecedent history of living and working in the Cayman Islands, when deciding that the circumstances of this case, did not qualify for the "exceptional circumstances category" according to their policy standards.

Dated this    day of November 2012

  
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Attorney - at- Law  
For the Applicants

**NOTE** – Pursuant to Order 53 an oral hearing is requested before this application for leave to apply for Judicial review is considered and determined by this Honourable Court.

This exparte application for leave to apply for Judicial Review was filed by Dennis Brady, Attorney-at-Law for the Plaintiffs, whose address for service is Trinity Square, Building B-3, Eastern Avenue, P.O. Box 1671, Grand Cayman, KY1-1109, Cayman Islands.