

**Application for Leave to Apply for Judicial Review (O.53, r.3)**

IN THE GRAND COURT OF THE CAYMAN ISLANDS

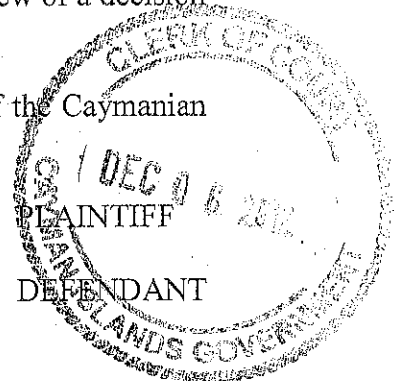
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CAUSE NO: OF 2012

**In the matter of** an application by A. Graham to apply for Judicial Review of a decision made pursuant to the Immigration Law (2006R) and (2010 Revision)

**And in the matter of** the dismissal of an appeal against the decision of the Caymanian and Permanent Residency Board by the Immigration Appeals Tribunal.

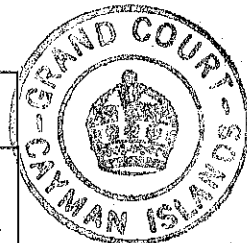
BETWEEN: ARTHUR GRAHAM

AND: IMMIGRATION APPEALS TRIBUNAL



APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law courts, George Town, Grand Cayman.	
Name, address and	Arthur Graham of 83 Greenwood Drive, George Town, Grand Cayman, Cayman Islands.
Judgment, order, decision or other proceeding in respect of which relief is sought	Decision of the Immigration Appeals Tribunal on 10 November 2011 received on 24 September 2012 to dismiss application for Permanent Residency.
<p align="center"><b>Relief Sought</b></p> <p>Leave to apply to the Grand Court for the issue of a Declaratory Order against the Immigration Appeal Tribunal's decision to dismiss the applicant's application for Permanent Residency as being irrational and unreasonable and thus null and void, an Order of certiorari to quash the decision and mandamus to hear the applicant and for any consequential damages.</p>	
Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	Clyde H. Allen CHAMBERS Attorney-At-Law PO Box 31076 SMB, Grand Cayman, Cayman Islands



Signed <i>C. H. Allen</i>	Dated 6.12.12
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## GROUNDINGS ON WHICH RELIEF IS SOUGHT

1. This matter was determined according to the Immigration Law (2007 Revision) (hereafter referred to as the "2007 Law") notwithstanding that the application was lodged at the time when the Immigration Law (2006 Revision) (hereafter referred to as the "2006 Law") was in place. This law was amended by the Immigration (Amendment (No.2) Law 2006. Since then the Immigration Law (2007 Revision) (hereafter referred to as the "2007 Law") was enacted and was in place when the applicant lodged his appeal against the refusal decision of the Caymanian and Permanent Residency Board. Since then the Immigration Law (2010 Revision) has been enacted.

2. Sections 15 and 16 of the 2007 and 2010 Law provides, *inter alia*, as follows:

15. (1) *Save as otherwise provided in this Law, any person aggrieved by, or dissatisfied with, any decision of a Board other than a decision under section 14 may, within-*

(a) *twenty-eight days of the communication of the decision to him; or*

(b) *such longer period as the Chairman of the Immigration Appeals Tribunal may, for good reason shown, allow,*

*appeal there from by way of rehearing to the Immigration Appeals Tribunal, and matters referred to the Tribunal may not be remitted to that Board.*

(2) *An appeal under subsection (1) may be lodged on the ground that it is-*

(a) *erroneous in law;*

(b) *unreasonable;*

(c) *contrary to the principles of natural justice; or*

(d) *at variance with the Regulations.*

(3) *Where the Immigration Appeals Tribunal sends notice of its decision to the appellant by post, such notice shall be deemed to have been communicated to the appellant at the time at which it should have been received by him in the ordinary course of post.*

3. The manner in which the appeal is to be conducted is set out under section 16 of the Law as follows:

16. (1) *Appeals under sections 14 and 15 shall be by notice in writing addressed to the Secretary of the Board or of the Immigration Appeals Tribunal, as the case may be, and such notice-*

(a) *shall set forth-*

(i) *the decision against which the appeal is made;*

(ii) *whether or not the appellant wishes to be heard personally or by a representative; and*

(b) *shall be accompanied by a copy of the original application and in the case of an appeal to the Immigration Appeals Tribunal, by the prescribed non-refundable processing fee.*

(2) *On receipt of the notice of appeal the Appellate Tribunal shall, within fourteen days, notify the Chief Immigration Officer or the Board, as the case may be, of the decision against which the appeal is made.*

(3) *Within twenty-eight days of receipt of the notice referred to in subsection (2), the Chief Immigration Officer or the Board, as the case may be, shall deliver to the Board or the*

*Immigration Appeals Tribunal, as the case may be, and the appellant the reasons for his or its decision.*

*(4) The appellant shall, within twenty-eight days of receipt of the reasons referred to in subsection (3), file his grounds of appeal with the Board or the Immigration Appeals Tribunal, as the case may be, and serve a copy thereof on the Chief Immigration Officer or the Board.*

*(5) The Chief Immigration Officer or the Board may, within twenty-eight days of the receipt of the grounds of appeal referred to in subsection (4), provide a written defence which shall be filed with the Board or the Immigration Appeals Tribunal, as the case may be, and served on the appellant.*

*(6) Where the appellant has applied to be heard personally or by a representative, the Appellate Tribunal shall fix a time and a date for such hearing and notify the appellant and, as the case may be, the Chief Immigration Officer or the Board thereof.*

*(7) Appeals to the Immigration Appeals Tribunal shall be by way of rehearing.*

*(8) 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.*

*(9) At every hearing of an appeal where the appellant or his representative is present, the appellant or his representative shall be given an opportunity to address the Appellate Tribunal, and the Chief Immigration Officer or his representative or the representative of the Board, as the case may be, shall be heard in answer, but the Appellate Tribunal may, in its absolute discretion, call upon either party further to address it.*

*(10) Representatives appearing on behalf of either party need not be persons having legal qualifications.*

*(11) The decision of the Appellate Tribunal shall be notified to the appellant with the least possible delay.*

4. Arthur Graham is a 45 year old man who was born in Montego Bay, St James, Jamaica on the 20<sup>th</sup> of May 1967. He is married to Rosemary Gordon who is 33 years old and was born on 14<sup>th</sup> of January 1979.
5. He was employed until recently with MPM Construction Ltd as a heavy equipments operator/driver. His salary was CI\$750.00 per week and his wife earned CI\$300.00 per week. She worked as domestic helper. They did not have any dependents.
6. Mr. Graham had recently invested in property. The Agreement was dated 5 February 2008 for property worth CI\$48,000.00 and at the time of his application CI\$29,000.00 had been invested in the property.
7. Mr. Graham had submitted an application for Permanent Residency on 1 February 2006. That application was refused on 5 June 2007. He appealed the decision and on 1 September 2011 the matter was heard before the Immigration Appeals Tribunal ("IAT"). The letter refusing his grant of permanent residency is dated 10 November 2011.
8. Mr. Graham was not notified of the refusal letter as at the date it was written and in fact was granted another working by operation of law ("WOL") stamp in his

passport on 20 April 2012 to 11 October 2012 and also invested in another property.

9. However, for the record and which point shall be addressed further below, the refusal letter was not received by Mr. Graham until 24 September 2012. Mr. Graham was contacted by the Immigration Department and asked to attend their office whereupon he was handed the aforementioned letter.
10. Mr. Graham's first complaint and thus issue for review is that Section 52 (10) of the Immigration Law (2010R) (the "Law") states, in short, that where a person whose application for permanent residency has been unsuccessful and no appeal has been filed within the time allowed then he would "...be entitled to one additional final non-renewable work permit....not exceeding 12 months....". Mr. Graham is now being told that he must leave the Cayman Islands and that he is not entitled to a final non-renewable work permit. Subsection (10) of the Law clearly states that the work permit is not to exceed 12 months in duration "...from the date of the communication to him of such refusal..." Mr. Graham's received the refusal letter on the 24<sup>th</sup> of September 2012.
11. The second point for review is that Section 30 (4) of the Law provides that the Board after applying the criteria set out in the points system shall grant permanent residency to any person obtaining one hundred points or more. Mr. Graham initially applied for Permanent Residency on 1 February 2006 and was awarded 91 points. He appealed the decision by way of Notice of Appeal on 28 August 2007 and by letter dated 10 November 2011 was awarded 96 points. On a review of the decision letter dated 10 November 2011 but communicated to him on 24 September 2012 and on comparing it with the earlier decision of the Immigration Board, the IAT appear to have simply awarded 3 points to acknowledge Mr. Graham's investment in property but without explanation and thus capriciously without any representation by the Immigration Board have taken off various points initially awarded by the Immigration Board. The reasons provided for the refusal of the IAT appears wholly inadequate as they do not provide full reasons in keeping with their duty to set out such reasons and or the context or evidence to support the deductions that were made.
12. Alternatively, and the next complaint is that under section 9 of the application form for the grant of Permanent Residency Mr. Graham was not awarded any points whatsoever. The apparent basis for not awarding him any points is that for points to be awarded to an individual under that head requires them to be from a nationality working in the Cayman Islands that is awarded work permits but which nationality are in fact as a percentage few in number in the Cayman Islands

holding work permits. Thus, if, at 31 December 2008, there are, for instance, 11,459 people in the Cayman Islands who are Jamaican nationals verses United Kingdom citizens of which there are about 2,015 then the Jamaican national who is applying for permanent residency, and not a work permit, would receive no points out of 20 whereas a UK citizen applying for permanent residency could receive as many as 15 points as they would be less than 6-10% of total work permit holders in the Cayman Islands. It is the view of Mr. Graham that there cannot be any correlation between an applicant for Permanent Residency who has resided in these Islands for over 8 years verses an applicant for a work permit who may leave after a couple of years or under the new regime may be rolled-over after 7 years. It is submitted that this criteria is divisive, misconceived and unconstitutional.

13. The decision to create such a criteria or not to award any points to Jamaican nationals based on the number of work permit holders must be in breach of Mr. Graham's human right not to be discriminated against and must be contrary (1) to Section 16 of Part 1 of the Bill of Rights, Freedoms and Responsibilities, (2) the Constitution of the Cayman Islands to give security to long term residents and (3) the intention within the Constitution to protect and care for all individuals and their basic human rights. Subsection (2) defines discrimination as "...affording different and unjustifiable treatment to different persons....on any ground such as....national or social origin. The number of work permit grants to any one nationality verses another varies from time to time and would also be impacted by a general policy not to employ a particular nationality verses another regardless of the competency to do the job and/or the roll-over policy under extant law new.
14. Mr. Graham will seek a declaration that that part of the Law and its Regulations and thus that part of the primary and sub-ordinate legislation is incompatible, unclear or ambiguous with the Bill of Rights and thus his rights.
15. Mr. Graham's movement and ability to reside in the Islands are also being impugned contrary to section 13 of the Bill of Rights and he seeks to have his case reviewed by a competent authority. Mr. Graham considers that the method of awarding points is wholly arbitrary and without transparency and thus prevents him from properly understanding how points are awarded, if at all, and thus limits his ability to understand and/or challenge any such award.
16. Mr. Graham will suffer economically and thus incur financial hardship as he is no longer able to work and thus finance the properties in which he has invested, he having invested in another property. He will lose the investments and suffer other losses which investments were made to show his desire to remain and reside long

term in the Cayman Islands. Having made these investments the points awarded by the Immigration Board did not reflect the level of investment versus his actual means or earning capacity as no points were awarded and still do not appear to properly reflect this award having only be awarded 3 points by the IAT based on his circumstances.

17. Alternatively, it is of significance that pursuant to "...16(5) *The Chief Immigration Officer or the Board may, within twenty-eight days of the receipt of the grounds of appeal .....provide a written defence which shall be filed with ..... the Immigration Appeals Tribunal, .....and served on the appellant.* Not only was no defence provided but also no one from the Immigration Board appeared before the IAT to make representation rebutting the Grounds of Appeal or suggesting the points awarded were in anyway incorrect.
18. The court is referred to an e-mail dated 26 April 2010 from Petula Twinn, Appeal Coordinator at the Cayman Islands Department of Immigration which appears to confirm that the Chairman of the CS&PR Board "*..has reviewed the following detailed Grounds of Appeal for the following appellants and has advised that the Board has nothing to add and the appeal statement previously submitted may stand alone:...*" It is difficult therefore to understand the basis on which the IAT can when an appeal comes before it do anything other than to award additional points as there was nothing before the IAT other than evidence to support a change of circumstances or issues that had not previously been addressed. There was clearly nothing before the IAT to suggest that any of the points awarded before the Immigration Board were wrongly awarded and that deductions should be made. The IAT without any proper basis, explanation or reasons have removed 5 points thus reducing Mr Graham's award after the new evidence was provided from 101 points to 96 points and thus dismissing his appeal against the refusal to grant him permanent residency.
19. Mr. Graham considers the issues raised here are of some considerable importance as the IAT are applying a method of dismissal of his application without any basis that begs explanation and thus on its face appears capricious. It has made deductions from the points awarded when there was no basis to suggest that the points awarded by Immigration Board, and which award of points went unchallenged, can be reduced.
20. Mr. Graham humbly request that he be granted Permanent Residency.

Chambers  
6 December 2012