



AMENDED Application for leave to apply for judicial review (0.53, r.3)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 360 OF 2013

IN THE MATTER OF THE IMMIGRATION LAW (2013 REVISION)

AND IN THE MATTER OF AN APPLICATION FOR A DECLARATION against the refusal by the Chief Immigration Officer and The Chairman of the Immigration Appeals Tribunal to grant asylum

AND IN THE MATTER OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009 pursuant to an applicant to prohibit expulsion from the Cayman Islands

AND IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO Order 53 of the Grand Court Rules

- BETWEEN:**
- (1) MARIA DEL PILAR ORTIZ CHAVEX
 - (2) ALURA HERNANDEZ CHAVEZ
 - (3) ERIK HERNANDEZ ORTIZ (A MINOR) **APPLICANTS**
- AND:**
- (1) THE CHIEF IMMIGRATION OFFICER
OF THE CAYMAN ISLANDS **SECOND RESPONDENT**
- and
- (3) THE HONOURABLE ATTORNEY GENERAL
OF THE CAYMAN ISLANDS **THIRD RESPONDENT**

To the Clerk of the Court of Law, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant	Maria Del Pilar Ortiz Chavez/Alura Hernandez Chaves/Erik Henandez Oriz (a minor). c/o H. Phillip Ebanks – Attorney, 62 Hospital Road, Grand Cayman
Judgment, Order, Decision or other proceedings in respect of which relief is sought	A. Decision by Chief Immigration Officer not to grant asylum under the 1951 Refugee Convention.

	B. Decision of the Chief Immigration Officer to deny the applicants refugee status under Section 19 of the Cayman Islands Constitution Order 2009.
<p>RELIEF SOUGHT</p> <p><i>Order of certiorari</i> to quash the Decision and Order of the Chief Immigration Officer and The Chairman of the Immigration Appeals Tribunal.</p> <p><i>Order of mandamus</i> directed to the Chief Immigration Officer to grant asylum under Section 19 of the Cayman Islands Constitution Order 2009 and/or The 1951 Refugee Convention.</p> <p>A Declaration that the Applicants passport be endorsed with an unconditional right of re-entry to the Cayman Islands.</p> <p>A Declaration that the Applicants should be afforded the right the work in accordance with Section 84(4) of the Immigration Law (2013 Revision) subject to the Cessation Provisions contained in the Refugee Convention of 1951.</p> <p>That the Applicants have such further consequential or other relief as this Honourable Court</p>	
Name and address of Applicant's Attorney, or if no attorneys acting, the address for the service of the applicant	H. Phillip Ebanks, Attorney-at-Law, of 62 Hospital Road, Grand Cayman KY1-1202

AMENDED GROUNDS ON WHICH RELIEF IS SOUGHT

The Grounds of this Application upon which said reliefs are sought are:

1. The decision of the Chief Immigration Officer to refuse the grant of asylum to the Appellants are in breach of the Cayman Islands obligations under the Refugee Convention of 1951 because of the Appellants will be at risk of persecution as identified by the Convention, namely a "well-founded fear of persecution."
2. The decision of the Chief Immigration Officer and the Cayman Islands Appeals Tribunal is unlawful in denying refugee status to the Appellants under Section 19 of The Cayman Islands Constitution Order 2009 and / or the Appellants removal from the Cayman Islands in consequence of the decision would be unlawful under Section 19 because the Appellant's human rights (i.e. torture and inhumane treatment of section 3 of The Cayman Islands Constitution Order 2009 would be breached.

3. The Chief Immigration Officer fettered her discretion by not granting asylum to the Applicants on reaching her decision, in that the statements she made were prejudicial and bias in –
 - a. That she failed to adequately consider or at all the Applicants claim of the violent situation in Mexico when making their decision as stated in the First Respondent's refusal letter dated 20th April, 2011 to the Appellants at paragraph 2 that, *"The Cayman Islands Immigration Department has considered the individual circumstances of your case, and in addition, the situation in Mexico,"* in that the said Respondent could not have considered *"...the situation in Mexico,"* when by the said Respondent own admission at paragraph 5 of that letter dated 13th December 2012, she carried out no enquiries with the Mexican officials or private entities or individuals in Mexico.
 - b. That she erred in concluding, as stated in the refusal letter dated 20th April 2011 at paragraph 4 that, *"You have never had any problems with the Mexican Authorities,...and "At no time did you express that the Mexican Authorities were unwilling or unable to offer you protection, and although you have stated there is corruption within the Mexican Police, you have not experienced the said corruption first hand"* taken into consideration the fact that the 1st Applicant's evidence revealed that one Tomas Arredondo Salgado, the Chief of Police in Toluca, Mexico is the brother of Armando Arredondo Salgado and Jesus Lara C. Also, the fact that the 1st Applicant's evidence revealed that she and her daughter did made such a report to a Commander at the Office of Coordination of Security Risk (OCRA) who was unable to assist her and her daughter owing to threats against him as well.
 - c. The sentence *"...although you have stated there is corruption within the Mexican Police, you have not experienced the said corruption first hand"* is inaccurate and misleading and was taken from Question #6 of the Applicant's Immigration interview notes that were conducted in Spanish and translated to English incorrectly, and words added to include, that the Judges of the High Court are corrupted, when in fact the Applicant stated it was the attorneys who are corrupt. Also, at Question #24 of the said Immigration interview notes there is a grave error where the Applicant alluded that the *"former Governor of her State was suspected of being involved with the drug cartel and he will be the President of Mexico"* has been removed from the English translation and a completely different sentence added.
 - d. That she erred in concluding, as stated in the refusal letter dated 20th April 2011 at paragraph 4 that, *"You have never had any problems with the Mexican Authorities,"* taken into consideration the fact that the Applicant's evidence revealed that one Tomas Arredondo Salgado, the Chief of Police in Toluca, Mexico is the brother of Armando Arredondo Salgado and who was complicit in criminal activities in Mexico.

- e. That she erred in the refusal letter dated 20th April 2011 by including at paragraph 4 that the Second Applicant was in a relationship with Armando Arredondo Salgado, when in fact the evidence shows incidences of violence perpetrated against the Second Applicant, such as (1) Stalking, (2) Harassment, (3) Extortion, (4) Kidnapping, (5) Threats, (6) Assault, (7) Rape, and (8) Wounding. All acts which shows that there was never a relationship, friendship or voluntary acquaintance with the said Armando Arredondo Salgado.
 - f. That she failed to adequately consider or at all at paragraph 4 of her refusal letter dated 20th April 2011 that, *"The fear that you have expressed in your asylum application is of an individual, namely Armando Arredondo Salgado. This fear is a domestic one, and not one of the Government or country of Mexico."* The First Respondent further elaborates this point at paragraph 5 of the said refusal letter by stating, *"You have given an in-depth account of unpleasant experiences and events that took place in Mexico. With that being said, none of these experiences or events were caused, allowed or initiated by the State and/or Government of Mexico.....that fear is a domestic one,"* in that the First Respondent failed to take account of the Applicant's fear of non-protection on the basis that Tomas Arredondo Salgado is the brother of Armando Arredondo Salgado her kidnapper and rapist, which fact has demonstrated in that persecution is tolerated by the state because the state either refuses or is unable to offer adequate protection.
4. The Chief Immigration Officer fettered her discretion by her own acts in that the procedure she adopted to communicate to the Applicants in denying their asylum were unfair and biased in –
 - a. That the First Respondent has breached section 19(1) of The Cayman Islands Constitution Order, 20089 by acting unfairly or bias in respect of the First Applicant to deny asylum in that a written recommendation (Interviewing Officer's Assessment of Case: Maria Del Pilar Ortiz Chavez) was made on the 26th August 2011 by Senior Immigration Officer Troy Thomas (the interview Officer), and the refusal letter dated 20th April 2011 was not communicated to the Applicant until 8th May 2012.
 - b. That the First Defendant has breached section 19(1) of The Cayman Islands Constitution Order, 2009 by acting unfairly or bias in respect of the Second Appellant to deny asylum in that a written recommendation (Interviewing Officer's Assessment of Case: Alura Hernandez Ortiz) was made on the 18th August 2011 by Senior Immigration Officer Troy Thomas (the Interview Officer), and the refusal letter dated 20th April 2011 was not communicated to the Appellant until 8th May 2012.
 5. The Chief Immigration Officer conduct of the interview was unfair and amounted to an error of law in that it was not done in the Applicants native Mexican Spanish Language, and without a lawyer present, as contained within the Judge's Rules. Additionally, the Applicants had no

access to an interpreter as required under the said provision.

6. The Immigration Appeals Tribunal fettered its' discretion by refusing the grant of asylum to the Applicants, by not taking into account factors that ought to have been taken into account or that their decision was so unreasonable that no reasonable authority would have imposed or arrived at such decision and is therefore inconsistent with the observance of *Wednesbury* reasonableness and should be set aside.

I pray for an oral hearing of this application for leave to apply for Judicial Review.

Dated the 22nd October 2013

Redated: 14 January 2014

Signed..... .....
ATTORNEY AT LAW FOR THE APPLICANT

This Application was filed by Hanson P. Ebanks, Attorney at Law, whose address for services is 62 Hospital Road, 2nd Floor, George Town, Grand Cayman, KY1-1202, Cayman Islands