



No. 53

Application for Leave to Apply for Judicial Review (0.53, r.3)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 52 OF 2013

BETWEEN: MICHAEL WILHELM KLUGE

Plaintiff/Applicant

AND: THE CAYMANIAN STATUS AND PERMANENT RESIDENCY BOARD

THE CHIEF IMMIGRATION OFFICER

Respondents



APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant(s)	The Applicant, Michael Wilhelm Kluge, a citizen of Germany, and the Applicant having applied to the Chief Immigration Officer for the grant of Residency for Persons of Independent Means pursuant to Section 34 of the Immigration Law (2007 Revision)
Judgment, order, decision or other proceeding in respect of which relief is sought	<ol style="list-style-type: none"> <li>1. The decision of the Chief Immigration Officer dated 17 May 2012 refusing the Applicant's request for the grant of Residency for Persons of Independent Means "the Chief Immigration Officer considers the Applicant's previous conviction for tax evasion to be serious, particularly given the length of imprisonment and therefore has made the decision to refuse the Applicant's application for Residency in the Cayman Islands."</li> <li>2. The decision of the Caymanian Status and Permanent Residency Board dated 28 November 2012 refusing the Applicant's appeal against the decision of the Chief Immigration Officer on the basis that "the</li> </ol>

Board was satisfied that the original sentence of the applicant was for a period of 46 months and, under these circumstances, it was considered a serious offense and one that was not capable of being rehabilitated. Under present Cayman Islands laws, a sentence of imprisonment is only rehabilitated if it is for a period not exceeding thirty months. Accordingly, under Cayman Islands laws [the Applicant's] conviction is not a conviction that could be rehabilitated as it exceeds the maximum period. .... also considers [the Applicant's] previous conviction for tax evasion to be a serious offense for the reasons set out above.”

#### Relief Sought

1. An order of *Certiorari* quashing the said decisions of the Chief Immigration Officer and the Caymanian Status and Permanent Residency Board;
2. An order of *Mandamus* directing the Chief Immigration Officer to consider the application of the Applicant for the grant of Residency for Persons of Independent Means on the basis that:
  - i) The Chief Immigration Officer and the Caymanian Status and Permanent Residency Board misdirected themselves in law by defining the term “serious criminal offense” in Section 34 (2) (a) of the Immigration Law (2011 Revision) in accordance with the provisions of The Rehabilitation of Offenders Law (1998 Revision). The Immigration Law (2011 Revision) does not define the term “serious criminal offence” and does not refer to The Rehabilitation of Offenders Law (1998 Revision) in defining the term “serious criminal offence”. Consequently the Chief Immigration Officer and the Caymanian Status and Permanent Residency Board were obliged by law to give to these words their natural and ordinary meaning and should not have relied on the provisions of the Rehabilitation of Offenders Law (1998 Revision) in defining the term without reference to the facts and circumstances that arose in the course of the application and the Appeal from the refusal of the application by the Chief Immigration Officer.
  - ii) The Chief Immigration Officer and the Caymanian Status and Permanent Residency Board acted unreasonably by relying on The Rehabilitation of Offenders Law (1998 Revision) (which provides that where a conviction (whether by or before a court within or outside the Cayman Islands) is not excluded from rehabilitation under the Law, and the rehabilitation period has been observed, that conviction shall be treated as spent which means that the individual in question shall be treated for all purposes in law as a person who has not committed, been charged with, prosecuted for, convicted of or

sentenced for the offence which was the subject of that conviction.) in defining the term 'serious criminal offence' as set forth in Section 34 (2) (a) of the Immigration Law (2011 Revision) is *ipso facto* an offence that is not capable of being rehabilitated under The Rehabilitation of Offenders Law (1998 Revision) to the exclusion of all other considerations. Whilst the Applicant's conviction may be considered as being excluded from rehabilitation on the basis that the total term of imprisonment ordered by the German court exceeded 30 months, the Chief Immigration Officer and the Caymanian Status and Permanent Residency Board failed to have regard or to give proper weight to the salient facts and circumstances of the offence as set forth in the Applicants Attorneys submissions dated 31<sup>st</sup> July 2012 and in the application itself.

- iii) The Caymanian Status and Permanent Residency Board failed to properly exercise its discretion by placing its reliance on the provisions of the Rehabilitation of Offenders Law (1998 Revision) to the exclusion of proper consideration of all the surrounding facts and circumstances and its decision is therefore unsafe, unsound and one that no reasonable tribunal would have arrived at.
- iv) The Chief Immigration Officer and the Caymanian Status and Permanent Residency Board acted unreasonably in finding that Applicant's offence which they found was a serious criminal offence should be grounds for the refusal of the Applicant of the right of the Applicant and his dependants to reside in the Cayman Islands without a right to work. Given the complete background of the Applicant, his investments in the Islands, the absence of commission of any other offence, his standing in his homeland, the fact that the offence was in relation to a corporation and not a personal offence, it is unreasonable for the Chief Immigration Officer and the Caymanian Status and Permanent Residency Board to find that a 1991 conviction for an offence which would not be recognised in the Cayman Islands, and which is no longer recognised in the jurisdiction from which the conviction emanates, is a "serious criminal conviction" within the meaning of section 34 (2) (a) of the Immigration Law and as such the application should be refused.

3. Such further, consequential, or other relief as to this Honourable Court seems just;

4. Costs

Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	Bodden & Bodden Attorneys at Law Grand Pavilion Commercial Centre 820 West Bay Road P.O. Box 10335 Grand Cayman KY1-1003. Ref: SAB/srt [2529-001]

Signed

*Badden & Badden*

Dated this 14th day of  
February, 2013

GROUND ON WHICH RELIEF IS SOUGHT

The Applicant seeks leave to apply for judicial review on the basis that the decision made by the Chief Immigration Officer on or before 17 May 2012 to refuse the grant an applicant of residency for persons of independent means was either: (i) unreasonable, (ii) procedurally irregular or (ii) irrational, because the Chief Immigration Officer failed to take into account the full particulars and the individual facts in this case.

**NOTE: The Applicant's Attorneys respectfully request a hearing of this application for leave to apply for judicial review pursuant to Order 53, Rule 3 (3) of the Grand Court Rules.**