

IN THE GRAND COURT OF THE CAYMAN ISLANDS

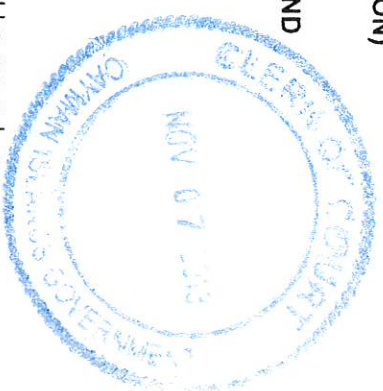
CAUSE NO: ~~6088~~60 OF 2013

IN THE MATTER OF SECTION 17(2) OF THE IMMIGRATION LAW (2013 REVISION)

AND IN THE MATTER OF AN APPLICATION FOR PERMANENT RESIDENCE AND
EMPLOYMENT RIGHTS BY MICHELLE JEAN HUTCHINSON-GREEN



NOTICE OF ORIGINATING MOTION



TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on the _____ day of _____ 2013 at _____ a.m./p.m. or as soon thereafter as counsel can be heard, by counsel on behalf of Michelle Jean Hutchinson-Green ("the Applicant") for an order that a decision of the Immigration Appeals Tribunal ("the Tribunal") dated 17th October 2013 upon a rehearing of an application by the Applicant for permanent residence and employment rights ("PR") to award the Applicant 92 points, be set aside, and that the said application be remitted to the Tribunal to be reconsidered and decided according to law.

And for an order that the costs of and incidental to this Application may be paid by the Immigration Appeals Tribunal.

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

1. Whereas on 30th April 2009 the Caymanian Status and Permanent Residency Board refused the Applicant's application for PR, the said Board awarded to the Applicant the following points, amounting in total to 81 points, and 19 points less than the prescribed requirement of 100 points:

1. Occupation 18
2. Knowledge and Experience 15
3. Skills 17
4. Financial Assessment 0
5. Funds and Salary 10
6. Contribution to the Community 4
7. History/Culture Test 17
8. Close Caymanian Connections 0
9. General 0

2. Whereas on 17th October 2013 following the receipt of the Applicant's Affidavit of Changes to Personal, Professional and Financial Circumstances, the Tribunal upheld valid grounds of appeal from the said decision of the Caymanian Status and Permanent Residency Board, and proceeded to conduct a rehearing, the said Tribunal awarded to the Applicant the following points, amounting in total to 92 points, and 8 points less than the prescribed requirement of 100 points:

1. Occupation 16
2. Knowledge and Experience 25
3. Skills 14
4. Financial Assessment 5
5. Funds and Salary 6
6. Contribution to the Community 9
7. History/Culture Test 17
8. Close Caymanian Connections 0
9. General 0

3. In the premises, the Tribunal had reduced Occupation by 2 points, Skills by 3 points and Funds and Salary by 4 points. Meanwhile, Financial Assessment had been increased by 5 points from 0 points and Knowledge and Experience had been increased by 10 points from 15 points to 25 points. Apparently the Applicant received no points for her 40% share in a company investment, no credit for funds in the bank, no credit for purchase of property and no credit for training Caymanians as outlined by the Applicant's employer. In summary, 20 points were awarded and a decisive 9 points were lost.

4. At no material time was the Applicant informed by or on behalf of the Tribunal that the Tribunal would consider reducing the number of points previously awarded and at no material time was the Applicant invited to make any submissions as to why her previously earned points should not be reduced. Had the said 9 points not been reduced and instead remained at their previous level, the Applicant would have received a grant of PR.

5. The Tribunal failed to accord the Applicant a fair hearing consistent with the principles of natural justice in circumstances where the Applicant had a reasonable expectation that her previously awarded points would not be reduced without an opportunity to make submissions to the Tribunal upon that specific issue.

6. The Tribunal further acted unfairly and irrationally in failing to take into account or alternatively into proper account the Applicant's Financial Assessment in a manner which fully and accurately reflected the Applicant's actual circumstances as adduced by her uncontested evidence and which demonstrated *inter alia* her purchase of a share in real estate and her share of a local business.

7. The Tribunal failed at any material time to inform the Applicant that the Tribunal would in practice examine the Applicant's points at large and not only in relation to the matter of which the Applicant had complained, thereby depriving the Applicant as matters ensued of a fair hearing in accordance with the principles of natural justice.
8. At no material time did the Tribunal identify for the assistance and benefit of the Applicant any of the adverse factors which might lead the Tribunal to reduce the points previously awarded.
9. In the instant matter no oral submission took place before the Tribunal, even though it was appropriate that the Tribunal should expressly invite such oral submissions from the Applicant in these circumstances.
10. By reducing the Applicant's points in the aforesaid unilateral and untransparent manner, the Tribunal created an appearance of bias in its deliberations.
11. In the premises, the Tribunal acted unfairly, irrationally, unlawfully, erroneously, and in a manner that was ultra vires its statutory duties and responsibilities. Accordingly, the decision of the Tribunal should be set aside for substantial wrong and miscarriage of justice so that the Applicant's application can be reheard in accordance with law.

DATED: 7th day of November 2013

HSM Chambers
HSM CHAMBERS
Attorneys for the Applicant

TO: The Clerk of the Court

AND TO: The Chairman
Immigration Appeals Tribunal
Government Administration Building
Elgin Ave,
George Town
Grand Cayman