

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: <sup>BT</sup> OF 2014

IN THE MATTER OF SECTION 67 OF THE IMMIGRATION LAW (2013 REVISION)

AND: IN THE MATTER OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009 pursuant to Order 77A Rule 4 for a Declaration to prohibit the expulsion from the Cayman Islands and Damages for Discrimination

AND: IN THE MATTER OF SECTION 16 OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009

AND: IN THE MATTER OF SECTION 24 OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009

AND IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW pursuant to order 53 of the Grand Court Rules

BETWEEN:            ELIZABETH FREDERICK CHAVEZ            APPLICANT  
AND:                CHIEF IMMIGRATION OFFICER            FIRST RESPONDENT  
AND:                IMMIGRATION APPEALS TRIBUNAL            SECOND RESPONDENT  
AND:                ATTORNEY GENERAL            THIRD RESPONDENT



**EXPARTE APPLICATION**  
**FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

To:    The Clerk of the Court  
      Law Courts Building  
      George Town  
      Grand Cayman

Name, address and description of applicant(s):

Elizabeth Frederick Chavez  
Building B-3 Trinity Square  
Eastern Avenue  
George Town  
Grand Cayman KY1-1009,  
Cayman Islands

## The Applicant

1. That the Applicant was born in the country of Nicaragua and applied for the grant of the Right to be Caymanian by descent, from her grandfather Carl Randolph Frederick, February 18 in the year 2013.
2. That at the time of making her application to the Caymanian Status and Permanent Residency Board, ("**the Board**") her brother and uncle had already, both been recipients of the said right by descent from my said grandfather.
3. That prior to the application being processed, she was informed by the Board, that the application required the original birth certificate of her grandfather in order to process her application.
4. At the time that she was informed of this requirement, she requested that the Board put off the processing of my application, to afford her sufficient time to obtain the said birth certificate from overseas.
5. Despite this request, the Board nonetheless proceeded with processing her application, and refused the grant on the basis that she had failed to show her entitlement to the Right to be Caymanian, on account that the proof to be supplied by the submission of her grandfather's birth certificate, had not been satisfied.
6. As a consequence of this action on the part of the Board, she appealed their decision to the Immigration Appeals Tribunal ("**the Tribunal**") and at the time of doing so, supplied as fresh evidence, the birth certificate of her grandfather.
7. She was allowed to appear at the hearing before the Tribunal, and did so in the company of her attorney and her brother, the grantee of the said right that she was seeking.
8. Around this time, one Ms. Roseta Moore, Customer Liaison Officer and Personal Assistant to the Chief Immigration Officer, had been insistent that she depart from the Cayman Islands, despite her making her aware that she had filed an appeal against the Board's decision
9. At the said hearing, her attorney brought this matter to the attention of the Chairman Mr. McCann, who was conducting the appeal and he issued a directive that she should be allowed to remain until November 30 2013, in order to facilitate her appearance at the Tribunal hearing

10. At that said hearing, she was asked to “again” produce the proof that my grandfather was Caymanian. I made the Chairman aware that she had submitted the said birth certificate at the time of lodging the appeal, but undertook to again do so.
11. She sought to follow up on the progress of her appeal by calling the Tribunal and was told at the time, that they were not in possession of several “other documents” including her birth certificate, and her grandfather’s birth certificate, which documents had never before been said to be missing from her appeal documents previously.
12. She then spoke to one Mr. Bryan who works as a Personal Assistant to the Honourable Premier, about her challenges, and he personally accompanied her to the offices of her lawyer, who produced to him, copies of all the said documents that the Tribunal was claiming she had failed to submit. He there and then spoke to someone in the Tribunal Office, telling that person that he was personally looking at the time, at the alleged missing documents, and that person declared to him then, that they in fact had the said documents on file, and that the only one missing was that of her grandfather’s birth certificate.
13. She subsequently took the birth certificate to the Government Administration Building along with a copy, which she had notarized by Mrs. Hope Stephens, who is the Receptionist in that building and a Justice of the Peace. That same time, she personally handed to a female Clerk from the Tribunal, the certified/notarized copy of the birth certificate as required to be done by the Chairman Mr. McCann.
14. In November of 2013, her attorney took ill and was off island in relation to surgery related matters. Being aware of this development, she took the initiative to contact the Tribunal, to update them on this development, as the further hearing date had been set for the 15<sup>th</sup> of November.
15. She spoke to the secretary at the Tribunal, one Ms. Yunina, and was told by her that due to a change in the law, neither her nor her lawyer were any longer permitted to appear in person before the Tribunal, and that the matter would proceed on the papers that were already before the Tribunal, and that she would be informed by letter of the results.
16. She was thereafter given visitor extensions and each time this was a challenge to her pride and dignity, as on each occasion she was referred to Ms. Roseta Moore who invariably embarrassed her and was always demanding that she leave the Cayman Islands.

17. It was not until after March 3 of 2014, that she became curious as to what had happened with her appeal, therefore she called in at the Department of Immigration as she could get no one on the telephone at the Tribunal. It was then that she was informed that her appeal had been dismissed on the grounds that she had failed to prove that I was entitled to being Caymanian on the ground of Descent.
18. This came as a shock to her particularly since her uncle and brother were granted this right on the basis of the said birth certificate.
19. She was subsequently told by a member of the Board that the result she got was because of who her lawyer is because nobody in there likes Brady because he pretends he knows it all, and that if she got a different lawyer she would have got her status "long time".
20. Needless to say she found this information shocking and unfair that her rights were being denied to me because of who her lawyer was.
21. She made further enquiries and was told that her status had been denied because her grandfather's birth certificate was not produced on the Tribunal's file. This again she found to be shocking news as not only had she submitted it as fresh evidence when she appealed in the first instance but following the conversation with Mr. Bryan and the officer at the Tribunal, she had personally delivered the copy notarized by Hope Stephens, which was done right there on the premises of the Government Administration Building.
22. She is particularly concerned that there are officers in the Department of Immigration and at the Tribunal, who appear to be demonstrating a significant bias towards her, and are determined to act in a discriminatory manner towards her, despite the rights which attend her being the granddaughter of a Caymanian.

**Decision in respect of which relief is sought:**

- (a) A Decision taken the Chief Immigration Officer Linda Evans and Customer Liason Officer Roseta Moore-Brown, to deny the Applicant a further extension of authority to remain within the Cayman Islands and to demand that she depart from the Islands by Tuesday April 15 2014.
- (b) A decision by the Immigration Appeals Tribunal dismissing the appeal of the Applicant against the refusal by the Caymanian Status and Permanent Residency Board, to grant the Applicant the Right to be Caymanian as provided for under the provisions contained in Section 22(2)(b) of the Immigration Law

### **Relief Sought:**

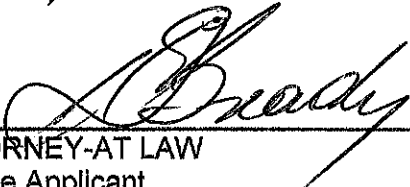
1. An order of Mandamus under the provisions contained in GCR 77A, directing the First Respondent, whether by his/her servants, agents or any Immigration Officer, or howsoever otherwise, to refrain from any and all actions, designed to cause or effect the removal of the Applicant from the Cayman Islands and more particularly any and all actions pursuant to section 13(2) and 13(2)(a-c) of the Cayman Islands Constitution Order 2009, unless and or until the protections afforded to the Applicant, in the provisions contained within section 13(2)(d)(iii) and 13(3)(a-d) of the said Order are observed, and this Judicial Review application is determined;
2. An Order for Judicial Review of the decision of the Immigration Appeals Tribunal
3. A Declaration that the First Respondent whether by his/her servant, agents or any Immigration Officer, or howsoever otherwise, be restrained and prohibited from any and all actions, the objective of which is the detention or removal of the Applicant, under any provision of the Immigration Law 2013 Revision, unless and or until the determination of this Judicial Review.
4. Costs and
5. Such further, consequential, or other relief as this Honourable Court seems just.

### **Grounds for Judicial Review**

1. **Wednesbury unreasonable:** The decision of the First Respondent is Wednesbury unreasonable when they concluded that the Applicant did not qualify for an extension of her authority to remain in the Cayman Islands, there being absent from the exercise of the discretion to decide in such matters, no objective assessment, evidenced by the fact that the First Respondent is seised of knowledge that the Applicants uncle and brother are recipients of the Right to Be Caymanian, by the very process by which the Applicant was seeking to obtain her entitled Right to be Caymanian, thereby rendering the decision by the First Respondent as being wrong in principle and in all the circumstances, unreasonable or alternatively tainted by irrationality.
2. That the exercise of this decision by the First Respondent is and has been invariably influenced by the decision of the Second Respondent and flies in the face of the fact that documents submitted to the Second Respondent by the Applicant, mysteriously disappeared from the file and among the several other documents submitted by the Applicant, in furtherance of her application for the Right to be Caymanian by Descent, in accordance with the provisions contained in Section 22(2)(b) of the Immigration Law 2013 Revision, which documents were re-submitted as specified and instructed by the Second Respondent, by the

Applicant, and again were later deemed to be missing from the number of documents required, with the result that the Applicant was informed by the Second Respondent, that she had failed to demonstrate that she had the said Right to be Caymanian, and the Applicant is of the opinion that the latest decision by the First Respondent, in unreasonably requiring her departure from the Cayman Islands, is wrong in principle and in all the circumstances, and is clearly a demonstration of bias, prejudice, and is discriminatory; in violation of the provisions contained in sections 16 and 24 of the Cayman Islands Constitution Order 2009.

Dated this 15<sup>th</sup> day of April 2014

  
\_\_\_\_\_  
ATTORNEY-AT LAW  
For the Applicant

**THIS EXPARTE APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW was FILED by Dennis Brady, Attorney-at-Law, Building B-3 Trinity Square, Eastern Avenue, George Town, P.O. Box 11740, APO, Grand Cayman KY1-1009, Attorney for and on behalf of the Applicant whose address for service is that of its said Attorneys-at-Law.**

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AND: CHIEF IMMIGRATION OFFICER FIRST RESPONDENT

AND: IMMIGRATION APPEALS TRIBUNAL SECOND RESPONDENT

AND: ATTORNEY GENERAL THIRD RESPONDENT

ACKNOWLEDGEMENT OF SERVICE OF NOTICE OF MOTION

If you intend to instruct an attorney to act for you, give him this form IMMEDIATELY.

Important:

Read the accompanying directions and notes for guidance carefully before completing this form. If any information is required and is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED

- 1. State the full name of the Respondents by whom or on whose behalf the service of the Notice of Motion is being acknowledged

THE CHIEF IMMIGRATION OFFICER, THE IMMIGRATION APPEALS TRIBUNAL AND THE HON. ATTORNEY GENERAL OF THE CAYMAN ISLANDS

- 2. State whether the Respondents intends to contest the proceedings (tick appropriate box)

(Yes)

(No)

3. If the claim against the Respondents is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Respondents intend to apply for a stay of execution against any judgment entered by the Applicant (*tick box*)

(Yes)                      (No)

Service of the Notice of Motion is acknowledged accordingly

(Signed)..... Dated      day of April 2014

Attorney for the Respondents

Address for service: Attorney Generals Chambers  
Ground Floor- dms House  
Genesis Close, George Town,  
P.O. Box 907  
Grand Cayman KY1-1103  
Cayman Islands

**Notes on address for service:**

Attorney: Where the Respondent is represented by an Attorney, state attorney's place of business in the Cayman Islands. A Respondent may not act by a foreign attorney.

Defendant in person: Where the Respondent is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered principal office.

*Endorsement by Applicants Attorney (or if suing in person) of his name, address and reference, if any, in the space below:-*

Dennis Brady  
Attorney-at-Law  
Building B-3  
Trinity Square,  
Eastern Avenue  
Grand Cayman KY1-1109

*Endorsement by Respondents Attorney (or by Respondents if suing in person) of his name, address and reference, if any, in the space below:-*

The Attorney General's Chambers  
Ground Floor – dms House  
Genesis Close, George Town  
P.O. Box 907, Grand Cayman KY1-1103  
Cayman Islands  
Tel: [345-9460022](tel:345-9460022)  
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