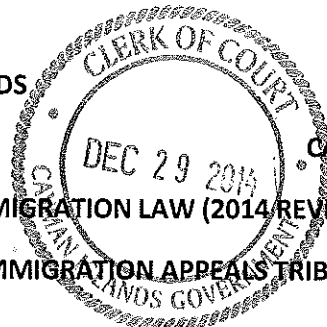


IN THE GRAND COURT OF THE CAYMAN ISLANDS

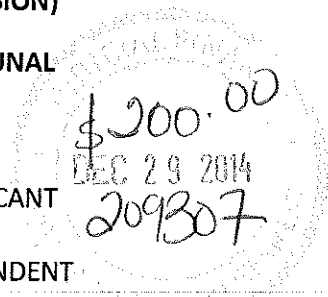


G0277

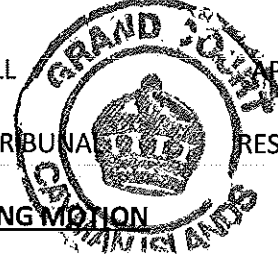
CAUSE NO: OF 2014

IN THE MATTER OF SECTION 17 (2) OF THE IMMIGRATION LAW (2014 REVISION)

AND IN THE MATTER OF A DECISION OF THE IMMIGRATION APPEALS TRIBUNAL DATED 1<sup>ST</sup> DECEMBER 2014



BETWEEN: VAL ERSTON MARSHALL



APPLICANT

AND:

IMMIGRATION APPEALS TRIBUNAL

RESPONDENT

NOTICE OF ORIGINATING MOTION

**TAKE NOTICE THAT** the Court at the Law Courts, George Town, Grand Cayman will be moved on the day of 2015 at am/pm or as soon thereafter as counsel can be heard on behalf of **VAL ERSTON MARSHALL** ("the Applicant") for an order that the decision of the Immigration Appeals Tribunal ("the Respondent") dated the 1<sup>st</sup> December 2014, upon the appeal by the Appellant against the Caymanian Status and Permanent Residency Board's refusal of the grant of Permanent Residency, be set aside, and that the said application be remitted to the Respondent to be reconsidered and decided according to law.

**AND FURTHER TAKE NOTICE** that the grounds of this application are:

1. Whereas on 2<sup>nd</sup> April 2009, the Caymanian Status and Permanent Residency Board ("the Board") advised the Appellant that his application for the grant of Permanent Residency was refused.
2. And whereas the Appellant through his agent by letter dated 22<sup>nd</sup> April 2009 provided to the Respondent the Appellant's notice of appeal in respect of the said decision.
3. And whereas under cover of letter dated 20<sup>th</sup> April 2010, the Board in its appeal statement indicated that the Board had taken its decision under section 30 (1) of the Immigration Law (2007 Revision).
4. And whereas under cover of letter dated 5<sup>th</sup> August 2010, the Appellant through his agent provided to the Respondent detailed grounds of appeal against the said decision. The Appellant's agent further stated:

*"Our Client...is requesting an audience with the Immigration Appeals Tribunal in order to further substantiate his case".*

5. And whereas in its letter to the Appellant's agent dated 9<sup>th</sup> August 2010, the Respondent advised the Appellant's agent that she would be advised of the date and time for her to attend the hearing.

6. And whereas in its letter to the Appellant's agent dated 1<sup>st</sup> December 2014, the Respondent stated that no Grounds of Appeal had been made out pursuant to sections 15(7) and 16(4) of the Immigration Law (2014 Revision) and accordingly the appeal was dismissed.

7. At no material time was the Appellant given any opportunity to be heard personally or by a representative as to any of the issues raised by the said appeal.

8. The aforesaid action or lack thereof of the Respondent was in contravention of section 15(3A) of the Immigration (Amendment) (No.2) Law 2013, which states:

*"At a hearing on grounds under subsection 1 the Immigration Appeals Tribunal shall apply the Law that is or was in effect at the time of the Board's or the Chief Immigration Officer's decision."*

9. With respect to the Appellant's application, the law to be applied by the Respondent was the law in effect at the time of the Board's decision, this being the Immigration Law (2007 Revision) ("the Relevant Law").

10. In the premises, by ignoring the Appellant's request to be heard in person, the Respondent failed to comply with section 16 (6) of the Relevant Law which states:

*"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. ..."*

11. The Respondent's failure to allow the Appellant a fair hearing is ultra vires and inconsistent with the principles of natural justice and breached those principles in circumstances where attendance was both sought and having been so sought was then prescribed by law.

12. Furthermore, the Respondent acted contrary to section 114(1) of the Immigration Law (2013 Revision) as amended by section 39 of the Immigration (Amendment) (No.2) Law 2013, which states:

*"Nothing in this Law shall adversely affect the rights of any person where those rights—  
(a) were acquired under the Immigration Law (2012 Revision) or any earlier Law; and*

(b) existed immediately prior to the commencement of the Immigration (Amendment) (No. 2) Law, 2013.

13. And whereas under cover of letter dated 5<sup>th</sup> August 2010 , the Appellant through his agent provided to the Respondent updated information in support of his appeal as follows:


*"...Our Client is also requesting the Immigration Appeals Tribunal to further take into consideration the following updated information which would allow him to receive additional points: Funds and Salary – An updated bank reference confirming savings accounts with combined balances of CI\$11,664.70 with Scotiabank & Trust (Cayman) Ltd..."*

14. In the premises by ignoring the Appellant's updated information, and dismissing his appeal, the Respondent failed to comply with section 16 (8) of the Relevant Law which states:

*"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."*

15. In the premises, the Respondent acted unfairly, irrationally, unlawfully, erroneously and in a manner that was *ultra vires* of its statutory duties and responsibilities. According, the decision of the Respondent should be set aside for substantial wrong and miscarriage of justice so that the Appellant application can be reheard in accordance with law.

DATED: 27<sup>th</sup> day of December 2014

  
GOLDFIELD CAYMAN  
Attorneys for the Applicant

TO: The Clerk of the Court

AND TO: The Immigration Appeals tribunal  
The Attorney General's Chambers  
The Chief Immigration Officer