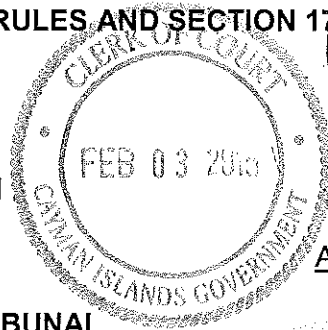


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CASE NO. G0017 OF 2015

IN THE MATTER OF ORDER 55 OF THE GRAND COURT RULES AND SECTION 17(2) OF THE IMMIGRATION LAW (2014 Revision)



BETWEEN:

- 1) OSETRA BAY T/A TIKI BEACH
- 2) CHULEERAT SAE-JAO

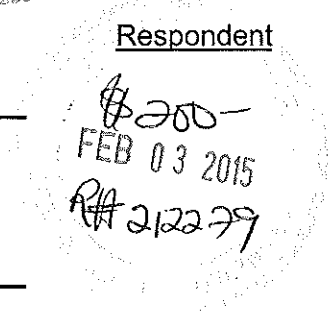
Appellants

AND:

THE IMMIGRATION APPEALS TRIBUNAL

Respondent

NOTICE OF ORIGINATING MOTION



TAKE NOTICE that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on the day of 2015, at a.m. / p.m., or as soon thereafter as Counsel on behalf of the above Appellants can be heard, on appeal from a decision of the Immigration Appeals Tribunal communicated by letter dated 8 January 2015, dismissing an appeal against the refusal of the Business Staffing Plan Board to renew the Second Appellant's work permit.

GROUND OF APPEAL

AND TAKE FURTHER NOTICE that the grounds of this appeal are as follows:

Breach of procedural fairness

- 1. The Immigration Appeals Tribunal failed to assess, or properly assess, the grounds of appeal as set out in the Notice of Appeal submitted by the Appellants, and instead arbitrarily dismissed them on the basis that *"insufficient grounds had been made out"*;

2. The Immigration Appeals tribunal refused the Appellants' request by letter dated 12 September 2014 to make submissions through Counsel in circumstances where an invite to do so would have been necessary to provide further information, reasonable in all the circumstances and would have enabled the Appellants' to properly present their case for renewal of the work permit;
3. The Immigration Appeals Tribunal failed to provide any, or any adequate and intelligible reasons as to why the appeal was dismissed, but instead arbitrarily dismissed it on the basis that "*insufficient grounds had been made out*".

Unreasonableness

4. In dismissing the appeal, the Immigration Appeals Tribunal failed to overturn a decision of the Business Staffing Plan Board (hereinafter referred to as "**the Board**") that was based upon two findings which were insufficiently supported by evidence.
 - (i) The Board found as a fact that "*In light of the offenses....the Worker was not of reputable character*" solely on the basis of the bare record of convictions. This was an irrational inference of fact and assumed that once an individual has been convicted of an offense they cannot be of good character subsequently.
 - (ii) The Board found as a fact that "*In light of the offenses....it would not be in the best interest of the community to grant the work permit*" solely on the basis of the bare record of convictions. No proper explanation as to the rational connection between the offences and the finding was provided, although it can only be presumed to be on the basis of the risk of recidivism. This was an irrational inference of fact and assumed that once convicted of an offense, an individual is likely to re-offend. As such the Board treated the Second Appellant as a habitual criminal.
 - (iii) In making the above findings the Board ascribed paramount weight to the bare fact of convictions and in doing so failed to balance relevant considerations in arriving at their decision to refuse the renewal of the work permit;

- (iv) The Board failed to properly investigate or have regard to matters that it ought properly to have assessed in determining the aforesaid issues, such as the circumstances of the offence, the prior good character of the Second Appellant, the subsequent good character of the Second Appellant, the time that had elapsed since the commission of the offenses, the lack of subsequent offending, rehabilitation or the potential for rehabilitation of the Second Appellant, the isolated 'one-off' nature of the offending, the minor nature of the offenses or any other evidence as to the character of the Second Appellant. In refusing the request of the Appellants to make submissions through Counsel the Board fettered its ability to receive such evidence.

Illegality

5. In dismissing the appeal the Immigration Appeals Tribunal failed to overturn a decision of the Board that had failed to properly and comprehensively take into account the matters set-out in statute at section 44(3)(a) and 44(4)(c) of the Immigration Law (2013 Revision).

Disproportionality

6. In dismissing the appeal the Immigration Appeals Tribunal failed to overturn a decision of the Board that amounted to a disproportionate response to the facts of the case.

RELIEF SOUGHT

AND TAKE FURTHER NOTICE that the following relief is sought:

1. The decision of the Immigration Appeals Tribunal, communicated by letter dated 8 January 2015, be overturned;
2. The appeal against the refusal of the Business Staffing Plan Board to renew the Second Appellant's work permit, dated 20 August 2014, be allowed;

3. In the alternative to paragraph 2 herein, that the matter be remitted to the Immigration Appeals Tribunal together with the opinion of the Grand Court, for rehearing and determination;
4. Such further and other relief that the Court deems fit; and
5. Costs.

AND TAKE FURTHER NOTICE that the Appellants request leave to file additional and/or supplementary grounds of appeal on receipt of the notes of evidence from the Immigration Appeals Tribunal.

Dated: 3 February 2015

Travers Thorp Alberga

TRAVERS THORP ALBERGA
Attorneys-at-Law for the Appellants

TO: The Clerk of the Grand Court

AND TO: The Chairman of the Immigration Appeals Tribunal