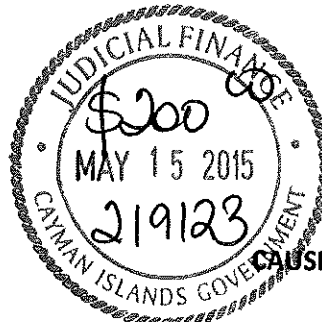


IN THE GRAND COURT OF THE CAYMAN ISLANDS

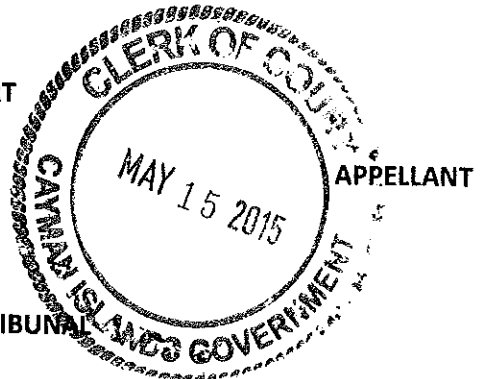


6079  
CAUSE NO: OF 2015

IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE IMMIGRATION APPEALS TRIBUNAL

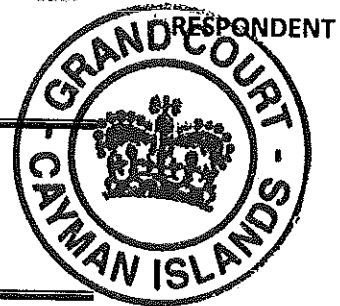
BETWEEN:

HOPETON JAMES HIBBERT



AND:

THE IMMIGRATION APPEALS TRIBUNAL



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 Appellant can be heard, on appeal from a decision of the Respondent communicated by letter dated 22 April 2015 (the "Decision Letter"), dismissing an appeal against the decision of the Caymanian Status and Permanent Residency Board (the "Board") to decline the Appellant's application to reside permanently in the Cayman Islands.

GROUND OFS OF APPEAL

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

Failure to provide reasons for the decision

1. The Immigration Appeals Tribunal failed to provide any, or any adequate and proper, reasons for its decision; notwithstanding that the Appellant, as a person adversely affected by this decision, exercised his right, in accordance with section 19(2) of Schedule 2 to the Cayman Islands Constitution Order 2009 (the "Constitution of the Cayman Islands"), to request and be provided with such reasons.

This NOTICE OF ORIGINATING MOTION was issued by Richard H. Barton, Attorney-at-Law for the Appellant, whose address for service is Artemis House, 75 Fort Street, George Town, P.O. Box 1294, Grand Cayman, KY1-1108, Cayman Islands.

2. Instead, the Immigration Appeals Tribunal arbitrarily dismissed the appeal with the bare and wholly inadequate explanation that "*insufficient grounds of appeal had been established*".
3. The said failure to provide reasons renders the decision of the Immigration Appeals Tribunal defective by reason that it is:
  - (i) Erroneous in law and *ultra vires* section 19(2) of the Constitution of the Cayman Islands;
  - (ii) Unreasonable; and
  - (iii) Procedurally unfair and thus contrary to the principles of natural justice.

#### Delay

4. Having been legally and ordinarily resident in the Cayman Islands since 1998, the Appellant submitted an application to reside permanently in the Cayman Islands on 14 June 2007. It is this very application that forms the subject of the present appeal. Notwithstanding that the Appellant lodged his appeal with the Immigration Appeals Tribunal against the original decision of the Board on 19 November 2010, it was not until the Decision Letter was issued on 22 April 2015 that this first appellate stage was finally concluded.
5. As a result of delays throughout the process and, in particular at the first appellate stage, nearly 8 years have now lapsed since the Appellant made his application. Consequently, the Appellant has now resided in the Cayman Islands for a total period of approximately 16 years.
6. In these circumstances the decision of the Immigration Appeals Tribunal was:
  - (i) Disproportionate and unreasonable; and
  - (ii) Contrary to the principles of natural justice.

#### Failure to properly consider whether the ground(s) of appeal were made out

7. In arriving at its conclusion that "*insufficient grounds of appeal had been established*", the Immigration Appeals Tribunal, in its Decision Letter, indicated that it had reviewed the following documents submitted on behalf of the Appellant: (i) "*the Notice of Appeal dated 27<sup>th</sup> August 2009*"; (ii) "*detailed grounds dated 18<sup>th</sup> November 2010*" (the "Detailed Grounds"); and (iii) an "*email dated 02<sup>nd</sup> April 2015*".
8. The Detailed Grounds refer, *inter alia*, to an unreasonable failure on the part of the Board, at first instance, to give due weight to the Appellant's close Caymanian connections; namely his sister, Karen Elaine Chin (nee Hibbert).
9. The Appellant had provided a Birth Certificate for Karen Elaine Hibbert and a Certificate of Caymanian Status for Karen Elaine Chin with his original application; both of which are recorded as being the Appellant's sister in the Appeal Statement provided by the Board to the Chairman of the Immigration Appeals Tribunal, dated 1 October 2010. However, in the course of processing

this application, the Board had requested further evidence demonstrating that Karen Elaine Hibbert and Karen Elaine Chin were in fact one and the same person.

10. This request was sent to the Appellant's immigration agent at the time. Unfortunately, this request was not passed onto the Appellant and when the short timeframe for the receipt of this supplementary information lapsed, the Board then proceeded to determine the initial application without considering this highly relevant information.

*Failure to properly consider the significance of the inaction by the Appellant's agent*

11. The Detailed Grounds reveal that the Immigration Appeals Tribunal was aware of this unsatisfactory situation and in then failing to properly consider the significance of the inaction by the Appellant's agent and the resulting miscarriage of justice, the Immigration Appeals Tribunal thereby acted in a manner that was:

- (i) Disproportionate and unreasonable; and
- (ii) Contrary to the principles of natural justice.

*Failure to take reasonable steps to remedy an injustice occurring*

12. The Detailed Grounds further reveal that the Immigration Appeals Tribunal was presented by the Appellant with an alternate course of action; namely: if it was that the Board had not received the documentary evidence sufficient to prove to the Appellant's close Caymanian connections, the Board could easily have accessed this very information through the Immigration Department's own records.

13. The failure on the part of the Immigration Appeals Tribunal to recognise what was a simple and entirely reasonable option in the circumstances, which, had the Board undertaken, would have avoided the subsequent hardship and years of uncertainty experienced by the Appellant, renders the denial of the appeal by the Immigration Appeals Tribunal:

- (i) Disproportionate and unreasonable; and
- (ii) Contrary to the principles of natural justice.

*Failure to properly consider clarifying evidence*

14. Furthermore, the Detailed Grounds also illustrate that the Immigration Appeals Tribunal was provided with a notarised copy of the Marriage Register, which confirms that Karen Elaine Chin and Karen Elaine Hibbert are indeed the same person.

15. The failure on the part of the Immigration Appeals Tribunal to act on this clarifying evidence, to accept that the Appellant does have close Caymanian connections and to account for this in his application to reside permanently in the Cayman Islands resulted in the Immigration Appeals Tribunal acting in a manner that was:

- (i) Erroneous in law;
- (ii) Disproportionate and unreasonable; and
- (iii) Contrary to the principles of natural justice.

Failure to properly consider additional new evidence

16. Additional new evidence was also provided to the Immigration Appeals Tribunal in support of the Appellant's application. Whilst the Decision Letter does not expressly refer to any additional new evidence and whether or not it was taken into account, it can be inferred from the determination; which simply states: "*insufficient grounds of appeal had been established*"; that such evidence was not taken into account.
17. In the present circumstances; and given the applicable Law at the time that the appeal was lodged, the failure of the Immigration Appeals Tribunal to properly consider additional new evidence by way of a full rehearing was:
- (i) Erroneous in law;
  - (ii) Disproportionate and unreasonable; and
  - (iii) Contrary to the principles of natural justice.

**RELIEF SOUGHT**

**AND FURTHER TAKE NOTICE** that the following relief is sought:

1. The decision of the Immigration Appeals Tribunal communicated in its Decision Letter be set aside;
2. The matter be remitted to the Immigration Appeals Tribunal for rehearing and determination;
3. The Appellant be accorded all rights permitted by the Law that was in effect at the time the initial appeal was lodged for the purposes of this rehearing;
4. The Appellant be permitted to submit new evidence at this rehearing;
5. Such further and other relief that the Court deems fit; and
6. Costs.

**AND FURTHER TAKE NOTICE** that the Appellant requests leave to file additional and/or supplementary grounds of appeal in the event that the Respondent provides full and proper written reasons for its decision.

Dated this 15 day of May, 2015.

*Etienne Blake.*

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Etienne Blake, Attorneys-at-Law  
Instructed by Richard H. Barton  
Attorney-at-Law for the Appellant

TO: The Clerk of the Court  
AND TO: The Chairman of the Immigration Appeals Tribunal