

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE: *G0143* OF 2015

IN THE MATTER OF: Section 22(3) OF THE Immigration Law (2013 Revision)

AND: IN THE MATTER Section 29 1(e) of the Immigration Law (2013 Revision)

AND: IN THE MATTER OF Section 30(1) of the Immigration Law 2009 Revision)

AND: IN THE MATTER OF: Section 38 (1) (b) of the Immigration Law (2013 Revision)

AND: IN THE MATTER OF: Section 15(7) and 16(4) of the Immigration Law (2014 Revision)

AND: IN THE MATTER OF: Section 17 of the Immigration Law (2013 Revision)

BETWEEN:

MAITLAND HENRY

APPELLANT

AND:

THE CHIEF IMMIGRATION OFFICER

FIRST DEFENDANT

AND: THE CAYMANIAN STATUS AND PERMANENT RESIDENCY BOARD SECOND DEFENDANT

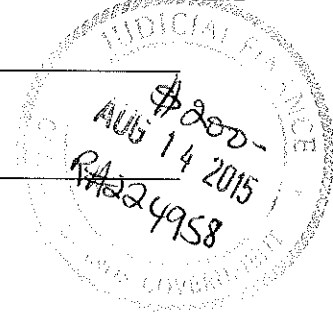
AND:

IMMIGRATION APPEALS TRIBUNAL

THIRD DEFENDANT



ORIGINATING NOTICE OF MOTION



TAKE NOTICE THAT the Court at the Law Courts, George Town, Grand Cayman will be moved on *19th October 2015 at 2.30 pm* or as soon thereafter as counsel can be heard, by counsel for **THE APPLICANT** for the following relief namely :-

1. An Order setting aside the Decision of the Immigration Appeals Tribunal, which decision by the said Tribunal, upheld the Decision of the Caymanian Status and Permanent Residency Board's refusal of the grant of the Right to be Caymanian to the Appellant, on the ground that he gave information in his application for permission to remain permanently in the islands which was false in a material particular or concealed a material fact.
2. On Order setting aside the Decision of the First Defendant to classify the Appellant as a visitor when he for all intents and purposes remain a Naturalised British Overseas Territory Citizen.
3. A Declaration that the First Defendant whether by his/her servants, agents or otherwise be restrained from any and all actions pursuant to the provisions of section 13(2) and 13 (2)(a-c) of the Cayman Islands Constitution Order 2009, unless and or until the

protections afforded the First Applicant, in the provisions contained within section 13(2)(d)(iii) and 13(3)(a-d) of the said Constitution Order are observed, and this Appeal is determined.

4. A Declaration that the First Respondent whether by his/ her servant , agents or otherwise be restrained and prohibited from any and all actions the objective of which is the detention and removal from the Cayman Islands of the Appellant, under any provision of the Immigration Law (2014 Revision) until this Appeal is determined.

BACKGROUND

The proceedings before the Immigration Appeals Tribunal to which this Appeal refers, was conducted over a period of time, commencing with the Tribunal's review of the Appeal Statement dated November 12 2014, which outlined the reasoning behind the decision to refuse the application made by the Appellant, for the grant of Caymanian Status. The Tribunal further reviewed the Notice of Appeal filed by the Appellant, and dated October 3 2014 and the Grounds of Appeal dated March 19 2015.

The Tribunal noted that insufficient Grounds of Appeal had been established pursuant to Section 15(7) and 16(4) (of the Immigration Law (2014 Revision) and accordingly dismissed the Appellants Appeal.

GROUND

It is as a consequence of this decision by the Tribunal, by which the Appellant's Appeal was dismissed that the Appellant now appeals against; on the following grounds:

PROCEDURAL IRREGULARITY

1. **THAT** the Tribunal erred in law by dismissing the Appellant's appeal, when having reviewed the Appeal Statement dated July 28 2011 as well as the one dated November 12 2014, which statements outlined the separate and several reasoning behind the decision by the Caymanian Status and Permanent Residency Board, ("**the Board**") to (1) revoke the grant of Permanent Residency, and to refuse the grant of the Right to be Caymanian respectively, in relation to the Appellant, the Tribunal having reviewed the Notice of Appeal dated October 3 2014, including the detailed Grounds of Appeal dated March 19 2015 and deciding that "**insufficient grounds of appeal had been made out pursuant to section 15(7) and 16(4) of the Immigration Law 2014 Revision**", and accordingly dismissing the Appeal brought by the Appellant; was wrong in law, erroneously and unreasonably done.

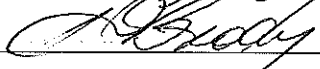
2. **THAT** the Board and the Tribunal erred in law by finding, that the Appellant was a person who fell within the provisions contained in Section 38(1)(b) of the Immigration Law 2014 Revision (the Law”) as he did not give ...”**information...for permission to remain permanently in the islands [which] was false in a material particular or concealed a material fact**”, when in fact and in all the circumstances there was no evidence to support the assertion of false information; as the Board was at the time, in possession of information to the contrary; when they made the decision to refuse the grant of the Right to be Caymanian.
3. **THAT** the Tribunal further erred in law by agreeing with the findings of the Board, that in relation to the Appellant ...”**the false information provided by the Appellant and (2) the payment of the administrative fine. Consideration of the character and conduct of the Appellant...the Tribunal agreed false information provided was a relevant consideration...the Board acted in accordance with Section 29(3)(e) and Section 38(1)(b)**”... were indeed facts which confirmed the decision to not make a grant of the Right to be Caymanian to the Appellant, when the Tribunal was in possession of information to the contrary and there was no evidence to support this position having been taken by the Board.
4. **THAT** the Tribunal erred in law and in all the circumstances by finding that ...”the decision of the Board did not breach the principles of natural justice or the Bill of Rights.
5. **THAT** the Tribunal erred in law and in all the circumstances when it decided that...”**The payment of the Administrative fine provided sufficient evidence of the Appellant’s admission of guilt. Therefore the Board was not required to request an audience with the Appellant**”...was wrong in law, principle and all the circumstances, particularly in light of the fact that the Board and subsequently the Tribunal, were at all material times, in possession of information to the contrary which required at the very least clarification; prior to any such decisions being made to refuse the Appellant’s grant of the Right to be Caymanian.
6. **THAT** the Chief Immigration Officer erred in law when she wrote to advise the Secretary of the Caymanian Status and Permanent Residency Board that ...”**Mr. Henry’s permanent residency was revokedin keeping with Section 38(1)(b). It is my belief therefore, with Mr Henry’s loss of the right to reside that it follows that he must be conditioned as visitor**”... when the Appellant was for all intents and purposes a person entitled to, by virtue of Section 29(3) of the Law; to reside permanently in the Cayman Islands.
7. **THAT** the Board erred in law by refusing the Grant of the Right to be Caymanian to the Appellant, under the provisions contained in Section 22(3) of the Immigration Law, by

taking into account irrelevant information and disregarding relevant facts; in arriving at the decision to refuse the said grant to the Appellant.

AND THE APPELLANT THEREFORE PRAYS THAT: the Decisions imposed by the Caymanian Status and Permanent Residency Board and the Immigration Appeals Tribunal, should be set aside as being wrong in law, by virtue of the erroneous application of the law, in principle and in all the circumstances were Wednesbury unreasonable, a rehearing be ordered alternatively; and the grant of the Right to be Caymanian be awarded to the Appellant.

DATED this 14 day of August 2015

FILED this 14 day of August 2015



DENNIS E. BRADY

Attorney-at-Law for the Appellant

TO: The Registrar of the Grand Court
AND TO: The Attorney General
AND TO: The Chief Immigration Officer

THIS NOTICE OF MOTION was **FILED** by Dennis Brady, Attorney-at-Law for and on behalf of the Applicants whose address for service is that of their said Attorney-at-Law, Crown Square, Building B-6, Eastern Avenue, P.O. Box 1671, Grand Cayman KY1-1009, Cayman Islands.

The Tribunal noted that insufficient Grounds of Appeal had been established pursuant to Section 15(7) and 16(4) (of the Immigration Law (2014 Revision)) and accordingly dismissed the Appellants Appeal.

GROUND

It is as a consequence of this decision by the Tribunal, by which the Appellant's Appeal was dismissed that the Appellant now appeals against; on the following grounds:

PROCEDURAL IRREGULARITY

1. **THAT** the Tribunal erred in law by dismissing the Appellant's appeal, when having reviewed the Appeal Statement dated July 28 2011 as well as the one dated November 12 2014, which statements outlined the separate and several reasoning behind the decision by the Caymanian Status and Permanent Residency Board, ("the Board") to (1) revoke the grant of Permanent Residency, and to refuse the grant of the Right to be Caymanian respectively, in relation to the Appellant, the Tribunal having reviewed the Notice of Appeal dated October 3 2014, including the detailed Grounds of Appeal dated March 19 2015 and deciding that **"insufficient grounds of appeal had been made out pursuant to section 15(7) and 16(4) of the Immigration Law 2014 Revision"**, and accordingly dismissing the Appeal brought by the Appellant; was wrong in law, erroneously and unreasonably done.
2. **THAT** the Board and the Tribunal erred in law by finding, that the Appellant was a person who fell within the provisions contained in Section 38(1)(b) of the Immigration Law 2014 Revision (the Law") as he did not give ... **"information...for permission to remain permanently in the islands [which] was false in a material particular or concealed a material fact"**, when in fact and in all the circumstances there was no evidence to support the assertion of false information; as the Board was at the time, in possession of information to the contrary; when they made the decision to refuse the grant of the Right to be Caymanian.
3. **THAT** the Tribunal further erred in law by agreeing with the findings of the Board, that in relation to the Appellant ... **"the false information provided by the Appellant and (2) the payment of the administrative fine. Consideration of the character and conduct of the Appellant...the Tribunal agreed false information provided was a relevant consideration...the Board acted in accordance with Section 29(3)(e) and Section 38(1)(b)"**... were indeed facts which confirmed the decision to not make a grant of the Right to be Caymanian to the Appellant, when the Tribunal was in possession of information to the contrary and there was no evidence to support this position having been taken by the Board.
4. **THAT** the Tribunal erred in law and in all the circumstances by finding that ... **"the decision of the Board did not breach the principles of natural justice or the Bill of Rights.**

5. **THAT** the Tribunal erred in law and in all the circumstances when it decided that..."The payment of the Administrative fine provided sufficient evidence of the Appellant's admission of guilt. Therefore the Board was not required to request an audience with the Appellant"...was wrong in law, principle and all the circumstances, particularly in light of the fact that the Board and subsequently the Tribunal, were at all material times, in possession of information to the contrary which required at the very least clarification; prior to any such decisions being made to refuse the Appellant's grant of the Right to be Caymanian.

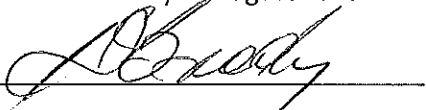
6. **THAT** the Chief Immigration Officer erred in law when she wrote to advise the Secretary of the Caymanian Status and Permanent Residency Board that ..."Mr. Henry's permanent residency was revokedin keeping with Section 38(1)(b). It is my belief therefore, with Mr Henry's loss of the right to reside that it follows that he must be conditioned as visitor"... when the Appellant was for all intents and purposes a person entitled to, by virtue of Section 29(3) of the Law; to reside permanently in the Cayman Islands.

7. **THAT** the Board erred in law by refusing the Grant of the Right to be Caymanian to the Appellant, under the provisions contained in Section 22(3) of the Immigration Law, by taking into account irrelevant information and disregarding relevant facts; in arriving at the decision to refuse the said grant to the Appellant.

8. **AS SUCH** the Appellant prays that the Decisions imposed by the Caymanian Status and Permanent Residency Board and the Immigration Appeals Tribunal, should be overturned and a rehearing be ordered instead; and the grant of the Right to be Caymanian be awarded to the Appellant.

DATED this 14 day of August 2015

FILED this 14 day of August 2015



DENNIS E. BRADY

Attorney-at-Law for the Appellant

TO: The Registrar of the Grand Court

AND TO: The Attorney General

These **Draft Grounds of Appeal** were filed by Dennis E. Brady, Attorney-at-Law for the Appellant whose address for service is P.O. Box 11740, APO Building B6 Crown Square, Eastern Ave, George Town, Grand Cayman KY1-1009