

No. 6

**Notice of Originating Motion (0.8, r3)**

IN THE GRAND COURT OF THE CAYMAN ISLANDS

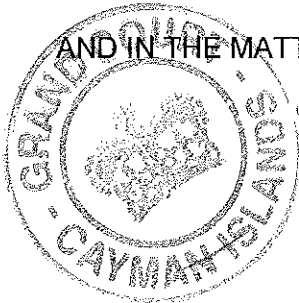


CAUSE NO. **G0162** OF 2015

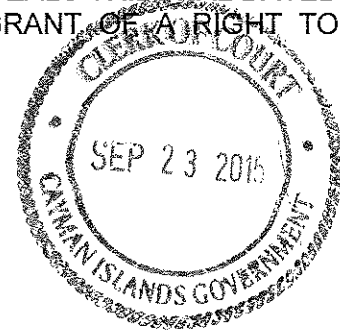
IN THE MATTER OF SECTIONS 15(7) AND 16(4) 17 OF THE IMMIGRATION LAW (2014 REVISION), AS AMENDED.

AND IN THE MATTER OF A DECISION BY THE IMMIGRATION APPEALS TRIBUNAL DATED 15<sup>TH</sup> SEPTEMBER 2015 DISMISSING AN APPEAL FOR THE GRANT OF A RIGHT TO PERMANENT RESIDENCE

AND IN THE MATTER OF NORMAN CHIT KOO



**NOTICE OF ORIGINATING MOTION**



**TAKE NOTICE** that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on 4 NOV at 9:30 am/pm or as soon thereafter as counsel can be heard, by counsel on behalf of Norman Chit Koo.

1. An order staying the decision of the Immigration Appeals Tribunal dated 15<sup>th</sup> September 2015 dismissing the appeal of the Appellant Norman Chit Koo against the decision of the Caymanian Status and Permanent Residency Board to refuse a grant of Permanent Residence to the Appellant;
2. An order remitting the appeal to the Immigration Appeals Tribunal for rehearing and determination by it on the basis that its decision was wrong in law;
3. Such further, consequential, or other relief as to this Honourable Court seems just;
4. Costs

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

1. The Immigration Appeals Tribunal was wrong in law in determining that the Caymanian Status and Permanent Residency Board had properly applied the definition of legal and ordinary residence from the Immigration Law 2003 to this Appellant's break in stay in the Islands between May 2005 and January 2006.
2. The Immigration Appeals Tribunal failed to have any or proper regard to the fact that the definition of legal and permanent residency in Section 2 of the Immigration Law 2003 Revision raises a presumption that where a person is absent from the Islands for a consecutive period of more than six months but less than twelve months there has been a break in residence but that such a presumption could be rebutted. The Board had before it more than sufficient evidence to rebut that presumption including but not limited to the fact that the Appellant applied for a work permit some five months from the date of expiry of his work permit on May 9<sup>th</sup> 2005 and the sole reason for his continued absence from the Islands between that application and his actual return to the Island in January 2006 was the delay on the part of Immigration in dealing with that work permit application.
3. In the event that despite having evidence of the Appellants clear intension to return and to take up employment with a new employer the Board was still of the view that the presumption had not been rebutted the proper course of action would have been to defer the matter and offer the Appellant an opportunity to address any concerns the Board may have had that the presumption had been rebutted prior to making a decision that the Appellant was not eligible for a grant of the right to permanently reside.
4. The Tribunal failed to inform the Appellant that it was taking into account an email from the Assistant Secretary of the Work Permit Board dated 12<sup>th</sup> July 2013 prior to making a decision and giving the Appellant no opportunity to respond.
5. In finding that the Caymanian Status and Permanent Residency Board had acted reasonably and fairly when it determined that there was a break in stay taking into account the Appellants circumstances and the re calculation of his term limit the Tribunal failed to have any or proper regard to the legal requirements that should have been followed by the Board in allowing the Appellant the opportunity to rebut the presumption as required by law.

Dated the 23<sup>rd</sup> day of Sept. 2015

Bodden & Bodden  
Bodden & Bodden, Attorney-at Law

TO: The Clerk of the Court

AND TO: The Immigration Appeals Tribunal and the Attorney General's Chambers and the Chief Immigration Officer.

This Notice of Originating Motion was issued by Bodden & Bodden, Attorneys-at-Law for and on behalf of the Appellant whose address for service is that of his said attorneys, 878 West Bay Road, 2<sup>nd</sup> Floor Caribbean Plaza, Grand Cayman KY1-1003.