

IN THE GRAND COURT OF THE CAYMAN ISLANDS

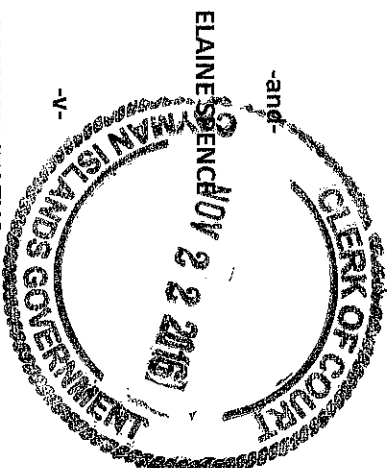
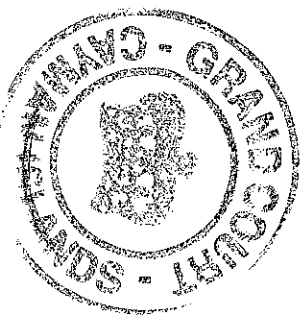
CAUSE NO: 189 OF 2016

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW UNDER ORDER 53 OF THE GRAND COURT
RULES 1995

IN THE MATTER OF A DECISION OF THE CAYMAN STATUS AND PERMANENT RESIDENCY BOARD AND
THE CHIEF IMMIGRATION OFFICER OF THE CAYMAN ISLANDS
BETWEEN

BRADLEY CARPENTER

1st Applicant



2nd Applicant

-v-
CAYMANIAN STATUS
AND PERMANENT RESIDENCY BOARD

1st Respondent

-and-

CHIEF IMMIGRATION OFFICER
OF THE CAYMAN ISLANDS

2nd Respondent

AMENDED NOTICE OF ORIGINATING MOTION

TAKE NOTICE that _____, a Judge of the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on _____ or as soon as thereafter as Counsel can be heard, by Counsel on behalf of the Applicants, Bradley Carpenter and Elaine Spence for an order that:

- (a) A declaration that the following contested decisions:
- i. The failure to reach a decision in respect to the 1st Applicants Permanent Residence application within a reasonable period of time; and
 - ii. the decision to classify the Applicants visitors; and

- iii. Not to issue a 6 month permission to remain and re-entry stamps; are unlawful.
- (b) An order quashing the Applicants status as a visitor.
- (c) A declaration that the 1st Applicant has been 'legally and ordinary' resident in the Cayman Islands since 18 October 2005 and the 2nd Applicant since 14 August 2006.
- (d) A declaration that the Applicants have leave to remain in the Cayman Islands as lawful residents until the 1st Applicant's Permanent Residence application is determined (including any appeals);
- (e) A declaration that the Respondent's failure to consider the 1st Applicant's PR application is unlawful, irrational, disproportionate and contrary to the principles of natural justice.
- (f) A order of Mandamus obliging either of the Respondents to consider the 1st Applicant's application for Permanent Residence as of the date which is most favourable to his application due to the failure to consider the application within a reasonable period of time.
- (g) An order of Mandamus obliging either of the Respondents to consider the 1st Applicant's application for PR within 2 weeks of the Order.
- (h) A declaration that if the 1st Applicant is to be granted Permanent Residence, he is to be granted it on the basis that he is subject to the terms and conditions of the Law as it was at the date of application.
- (i) An order prohibiting the 2nd Respondent from seeking the removal of the Applicants until the completion of the current proceedings and or the application process whichever is the later.
- (j) An order requiring the 2nd Respondent to provide the Applicants with suitable re-entry stamps to enable them to travel to and from the Cayman Islands as they like.
- (k) An order for the Respondents to pay the Applicants damages resulting from the Respondents misconduct and or inaction.
- (l) An for an order that costs of and incidental to this application may be paid by the First Respondent and /or the Second Respondent.

AND TAKE FURTHER NOTICE that the grounds of this application are set out in the attached document.

Dated this the 22nd day of November 2016.

Hsin Chambers

HSM CHAMBERS

To: The Clerk of the Court

And to The Chairman of the Caymanians Status and Permanent Residence Board.
PO Box 1098
Grand Cayman KY1-1102
Cayman Islands

AND TO: The Chief Immigration Officer
Department of Immigration
P.O. Box 1098
Grand Cayman KY1-1102,
Cayman Islands

AND TO: The Attorney General
Fourth Floor
Government Administration Building
133 Elgin Avenue
George Town
Grand Cayman

RE: APPLICATION FOR JUDICIAL REVIEW BETWEEN (1) MR BRADLEY CARPENTER (2) ELAINE SPENCE AND (1) THE CAYMANIAN STATUS AND PERMANENT RESIDENCY BOARD AND (2) CHIEF IMMIGRATION OFFICER OF THE CAYMAN ISLANDS.

GROUNDNS ON WHICH JUDICAL REVIEW IS SOUGHT

TO ACCOMPANY
FORM NO 53 APPLICATION FOR JUDICAL REVIEW (O.53, r3)

These grounds are accompanied by:

- An affidavits of Mr. Bradley Carpenter (the 1st Applicant) and an Affidavit of Elaine Spence (the 2nd Applicant).
- Inter-parties correspondence
- Legislative material
- Relevant Case Law

GROUNDNS ON WHICH JUDICAL REVIEW IS SOUGHT

INTRODUCTION

The Application in outline

1. By this application, Mr. Bradley Carpenter (“the 1st Applicant”) and Ms. Elaine Spence (“the 2nd Applicant”) apply for Judicial Review with respect of the failure of the Caymanian Status and Permanent Residency Board (“the Board”) and the Chief Immigration Officer of the Cayman Islands (“CIO”) to reach a decision in respect to the 1st Applicant’s application for Permanent Residence (“PR”) dated 21 October 2013 with a reasonable period of time.
2. The Applicants further challenge the decision of the CIO to only grant them “Visitor” status and a 30 day stamp prior to and when the Applicants returned from Canada on the 27th August 2016.
3. The Applicants further challenge the decision of the CIO not to assume responsibility for the processing, determining and granting or refusing applications for the right to be Permanent Residents when it became clear that Board were not carrying out their duties.
4. The Applicants aver that the failure of the Board to reach a decision in a reasonable time in regards to the 1st Applicant’s PR application is:
 - Unreasonable, in that the failure to reach a decision:
 - Does not satisfy the anxious scrutiny test.
 - Amounts to a breach of Article 9 of the Cayman Islands Constitution (“the Constitution”) and/ or in the alternative a breach of Article 8 of European Convention on Human Rights (ECHR).

- Amounts to a breach of Article 15 of the Constitution.
 - Amounts to a breach of Article 19 of the Constitution.
 - Is irrational.
 - By not reaching a decision in regards to the 1st Applicant's PR application and the numerous other outstanding applications the Board can be seen to be applying a moratorium to the processing of PR applications and thus acting *ultra vires*.
5. The Applicants contend that the decision to CIO to only grant them visitor status prior to and when they returned from Canada on the 27th August 2016 was:
- Unreasonable, in that the decision:
 - Is wrong in law.
 - Amounts to a breach of Article 9 of the Cayman Islands Constitution and/ or in the alternative a breach of Article 8 of European Convention on Human Rights (ECHR).
 - Amounts to a breach of Article 19 of the Constitution.
 - Is irrational.
 - Is procedurally unfair.
6. While it is accepted that the CIO did not personally make the decision on 27 August 2016, it is averred that he is vicariously liable for the acts of Immigration Officers and as such is liable for the acts of the unnamed Immigration Officer on the 27 August 2016.
7. The Applicants submit that the decision of the CIO not to take over the responsibility for the running of the PR system is:
- Unreasonable, in that it:
 - Does not satisfy the anxious scrutiny test.
 - Amounts to a breach of Article 9 of the Constitution and/ or in the alternative a breach of Article 8 of European Convention on Human Rights (ECHR).
 - Amounts to a breach of Article 15 of the Constitution.
 - Amounts to a breach of Article 19 of the Constitution.
 - Is irrational.
 - Is *ultra vires* in that the failure can be seen as being an acceptance that the Board have a legal right to impose a moratorium on PR applications when one does not exist.

Relief sought

8. Due to the above acts the Applicants seek
- (a) A declaration that the following contested decisions:
- i. The failure to reach a decision in respect to the 1st Applicants Permanent Residence application; and
 - ii. the decision to classify the Applicants visitors and not to issue a 6 month permission to remain and re-entry stamps;
- are unlawful.
- (b) An order quashing the Applicants status as a visitor.
- (c) A declaration that the 1st Applicant has been 'legally and ordinary' resident in the Cayman Islands since 18 October 2005 and the 2nd Applicant since August 2006.
- (d) An order for the Respondents to pay the Applicants damages resulting from the Respondents misconduct and or inaction.

The Facts

9. The Board is a creation of Statute (Section 4 (3) of the Immigration law (2015 Revision)) and its members and formation are set out in the aforementioned section. The Board's role is made clear in Section 7 (3)(b) (2015 Revision) and is defined as:
- (3) The Boards shall have the following functions and powers-
- (a)
 - (b) the Caymanian Status and Permanent Residency Board shall have responsibility for the processing, determining and granting of applications for the right-
 - (i) to be Caymanian;
 - (ii) to reside permanently in the Islands; and
 - (iii) of a spouse of a Caymanian to possess a Residency and Employment Rights Certificate;
 - (1) There shall be a Chief Immigration Officer and such other immigration officers as are necessary for the purposes of carrying out this Law, who shall be public officers.
10. The role of Chief Immigration Officer ("CIO") is also prescribed by law and set out in Section 3 of the Immigration Law (2015 Revision). The Law states:
11. As is set out, in the Applicants' affidavits which accompany this application:

- The 1st Applicant is a Canadian national.
- The 2nd Applicant is a Jamaican national.
- The Applicants reside at Unit 55, Lacobia Condos, 697D West Bay Road, George Town, Cayman Islands.
- The 1st Applicant became legal and ordinarily residence in the Cayman Islands as of 18 October 2005.
- The 2nd Applicant became legal and ordinarily residence in the Cayman Islands in August 2006.
- On 21 October 2013, the 1st Applicant applied for PR and the 2nd Applicant was named as a dependant.
- On 25 October 2013, the law concerning PR changed with the introduction of the Immigration (Amendment)(No.2) Law 2013.
- As at the date of the application for Judicial Review, the Applicants have been informed that the 1st Applicant's application for PR will be considered on 8 December 2016. This is not the first time that they have been informed that their application will be considered on a particular date and therefore the Applicants remain skeptical that the application will be considered on this date.
- The Applicants were first informed that they would be classed as visitors in July 2015.
- In March 2016, the Applicants were informed that they would no longer be granted further extensions to their visitors stamp and that they would be required to leave the Cayman Islands. The Applicants therefore left the Cayman Islands on the 30 March 2016.
- In a letter dated the 11 April 2016, HSM Chambers wrote to the CIO requesting he reconsider his characterisation of the Applicants as being visitors.
- Despite the request of the 11 April, no response has been received from the CIO. It is contended that he must have given fresh consideration to the submissions on HSM and that he dismissed the representations of HSM.
- On 27 August 2016, the Applicants returned to the Cayman Islands aboard Air Canada flight #AC972 and despite the fact that they had a house in the Cayman Islands, a pending PR application and sufficient funds to maintain themselves they were again deemed to be visitors and only granted a 30 day permission to enter.
- A letter before Action was delivered to the Attorney General's office via email on the 5 September 2016 and to the Respondents on the 6th September 2016.
- The Response from the Attorney General was received late in the day on the 22 September 2016.
- On the 23 September 2016, the Applicants were granted a leave to remain, as visitors until the 1 December 2016, notwithstanding the purported listing of the 1st Applicant's PR application on the 8th December 2016.
- On the 4 November 2016, the Board granted the 1st Applicant PR.

Relevant Statutes and Legal Definitions

12. The meaning of "legal and ordinary resident" is found in Section 2 of the Immigration Law (2015 Revision) and the same definition is found in Section 2 of the Immigration Law (2013 Revision). The definition is as follows:

“legal and ordinary residence” means a person’s uninterrupted voluntary physical presence in the Islands for a period of time without legal impediment (other than a tourist visitor or transit passenger) during which period the Islands are regarded as his normal place of abode for the time being, save that-

- (a) absences abroad of six consecutive months’ duration or less for, inter alia, purposes of education, health, vacation or business during such period shall count as residence in the Islands;
- (b) absences abroad of more than six consecutive months but less than one year shall raise the presumption that there has been a break in residence; and
- (c) absences abroad for twelve consecutive months or more shall constitute a break in residence;

13. The definition of Tourist Visitor is also defined in Section 2 and that definition is:

“tourist visitor” means a person arriving in the Islands for a visit of not more than six months’ duration otherwise than for a professional, financial trade or business purpose or for the purpose of seeking or engaging in employment;

14. Permission to Continue Working (PCW) permission are set out in Section 52 (4) of the Immigration Law (2015 Revision). This section was introduced by the Immigration (Amendment)(No2) Law 2013. Section 52(1) and (4) says:

(1) Subject to subsections (4), (6), (8), (10) and (11) the term limit of a worker shall be nine years, whether or not he is a key employee, in any case commencing with-

(a) the date on which the worker first entered the Islands, if the worker first entered the Islands as a work permit holder; or

(b) the date on which the worker is granted a work permit, if the worker first entered the Islands as a tourist visitor,

whether such permits are granted and held continuously or not, and upon the expiration of his term limit, the worker shall leave the Islands and neither the Board nor the Chief Immigration Officer shall grant or renew a work permit for him until he has ceased to hold a work permit for not less than one year after he has left the Islands

(4) Subject to subsection (5), where a person is eligible to apply and has applied for permission to reside permanently in the Islands under section 30 during the currency of a work permit, a Term Limit Exemption Permit or whilst working by operation of law under section 52A(11) he may apply to the Chief Immigration Officer for permission-

(a) to continue working on the same terms that applied to the work permit, the Term Limit Exemption Permit or those that applied to his working by operation of law; or

(b) to work for a different employer but in the same occupation as that in which he was authorised to work at the time of making the application, and such permission may be granted or renewed until such time as his application or any appeal arising from it is determined.

15. The PCW regime did not exist at the time the 1st Applicant applied for PR. The alternative permission relevant at that time was known as a permission to Work by Operation of Law (WOL). This permission was set out in the following terms in Section 52 (6) Immigration Law (2013 Revision):

(6) Subject to subsection (9), where a worker either falls within subsection (4) or has been designated as a key employee and in either event has applied for permission to reside permanently in the Islands under section 30 prior to, or within ninety days of, the expiration of his final work permit he shall be entitled either-

- (a) to continue working upon the same terms and conditions as applied to his final work permit; or
- (b) to work for a different employer but in the same occupation as stated in his final work permit.

16. Section 66 of the Immigration Law (2015 Revision) sets out who is permitted to land (and therefore reside) in the Cayman Islands. Those classes of people are;

Without prejudice to any of the succeeding provisions of this Law, it is an offence for any person other than a person-

- (a) who is Caymanian; or
- (b) who is not a prohibited immigrant and satisfies an immigration officer that he is-
- (i) authorised to carry on a gainful occupation under section 48, 53, 54 or 54A;
 - (ii) a person named in a work permit as a dependant of the licensee;
 - (iii) a person who is exempted under section 40 or a dependant of such a person; or
 - (iv) a person who has permission to reside or to remain permanently in the Islands under Part IV.

to land in the Islands, without, in each case, specific permission, with or without the imposition of conditions or limitations, being given by an immigration officer

17. Section 114 (1) and (2) Immigration Law (2015 Revision) confirms the following:

(1) 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.

(2) Where prior to the commencement of the Immigration (Amendment) (No. 2) Law, 2013 an application for the right to reside permanently in the Islands was made and is still pending, the Caymanian Status and Permanent Residency Board and the Chief Immigration Officer shall deal

with such application in accordance with the law in effect immediately prior to such commencement.

18. Article 9 of the Cayman Islands Constitution sets out:

(1) Government shall respect every person's private and family life, his or her home and his or her correspondence.

(2) Except with his or her own consent or as permitted under subsection (3), no person shall be subjected to the search of his or her person or his or her property or the entry of persons on his or her premises.

(3) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

(a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, or the development or utilisation of any other property in such a manner as to promote the public benefit;

(b) for the purpose of protecting the rights and freedoms of other persons;

(c) to enable an agent of the Government or a public body established by law to enter on the premises of any person in order to inspect those premises or anything on them for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that public body;

(d) to authorise, for the purpose of enforcing the judgment or order of a court, the search of any person or property by order of a court or the entry on any premises by such order; or

(e) to regulate the right to enter or remain in the Cayman Islands.

19. Article 15 (1) of the Cayman Islands Constitution confirms:

(1) Government shall not interfere in the peaceful enjoyment of any person's property and shall not compulsorily take possession of any person's property, or compulsorily acquire an interest in or right over any person's property of any description, except in accordance with law and where—

(a) the interference, taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit or the economic well-being of the community; and

(b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(c) provision is made by a law applicable to that interference, taking of possession or acquisition—

(i) for the prompt payment of adequate compensation; and
(ii) securing to any person having an interest in or right over the property a right of access to the Grand Court, whether direct or on appeal from any other authority, for the determination of his or her interest or right, the legality of the interference with, taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation; and
(iii) giving to any party to proceedings in the Grand Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

20. Article 19 of the Cayman Islands Constitution is as follows:

(1) All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.

(2) Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act.

21. Article 8 of the European Convention on Human Rights confers:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Unreasonable

22. It is the Applicant's position that the Board / the CIO have failed to award the 1st Applicant PR within a reasonable period of time after the submission of the original application on the 23 October 2013. For the avoidance of doubt it is contended that to consider an application and finally reach a decision after 3 years is not reasonable.

23. The Applicants would aver that the failure of the Board to reach a decision in regards to the 1st Applicant's PR application within a reasonable period of time is wholly unreasonable in the circumstances. It is contended that this failure to reach a decision within a reasonable period of time falls foul of the *anxious / heightened scrutiny test* and therefore the decision is unreasonable in the circumstances.

24. The Applicant's would contend that the failure of the Board to reach a decision within a reasonable period of time is unreasonable as the failure amounts to a Breach of Article 19 of the Constitution. All acts of public officials (which the Board is) must be *lawful, rational, proportionate and procedurally fair* and by taking 3 years to reach a decision, the Board cannot

- be seen as satisfying any of the requirements of Article 19. The Applicants would seek inferences to be drawn from the fact that the Respondents have failed to explain why they have not reached a decision in their response to the letter before action or subsequently. It can only be assumed that there is no reason why a decision could not be reached within a reasonable period of time and that the Respondents have made a deliberate decision not to consider the application before now.
25. The failure to reach a decision within a reasonable period of time is also unreasonable when one considers the situation the Applicants find themselves in, in light of Article 9 of the Constitution and Article 8 of the ECHR. The Board is required to consider Article 9 as they are an emanation of the State. As a direct consequence of the Board's failure to consider the 1st Applicant's application within a reasonable period of time, the Applicants have had their lives greatly disrupted as is set out in their in affidavits'. It is averred that the failure to reach a decision on the application cannot be reasonably justifiable in a democratic society and therefore a direct breach of Article 9 of the Constitution.
26. Further and in the alternative, it is averred that the failure to reach a decision (and the consequences of that failure) within 3 years of the date of the application is fundamentally disproportionate and therefore amounts to a breach of Article 8 ECHR thus rendering the failure unreasonable.
27. As a consequence of the failure to reach of decision within a reasonable period of time and due to the actions of the CIO, the Applicants have been forced to leave the Cayman Islands. It is therefore submitted that the actions of the Respondents amount to an interference with the Applicants peaceful enjoyment of their property. It is further contended that as these actions are, unreasonable, unlawful, disproportionate and unjustifiable the Respondents interference with the Applicants' property further renders the fact that a decision has not been reached by the Board unreasonable.

Irrational

28. It is contended that the failure to consider the 1st Applicant's application is irrational in the circumstances. The application in question was submitted prior to the Immigration (Amendment)(No.2) Law 2013 and therefore the application is to be dealt with under the rules as they were when the 1st Applicant applied namely the Immigration Law (2013 Revision). This law came into force on 25 March 2013 and was revised on 31 July 2013.
29. It is not clear from the Board why it took 3 years for a final decision to be reached in respect to the 1st Applicant's PR application. The letter before actions merely states that the application will be considered in due course. It is noticeable that no reason or explanations were offered why a decision had not been reached by the Attorney General. It is submitted that it was within the power of the Respondents to consider the application within a reasonable period of time and by not doing so they are acting irrationally. Equally, it is noted that as no fresh requests for information were made prior to the granting of the application have been made, the Board must have been satisfied with the information they have had before them since December 2015. It is contended that the Board took a conscious decision not to consider this application for over 3 years until they finally granted it.

Ultra Vires

30. One of the Board's duty as set out in Section 7(3)(b) of the Law is the *processing, determining and granting of applications* for the right to be a Permanent Resident. It is not within the Board's power to stay decisions for almost 3 years. Like in the case of *Warren v Immigration Board* [2002] CILR 188 where the Governor's moratorium on Caymanian Status application was held to be *ultra vires* it is contended that the decision of the Board not to consider the 1st Applicant and the numerous other applications for PR is *ultra vires* and therefore unlawful.

Classification as Visitors.

31. The classification of the Applicants as visitors has a number of consequences, namely:
- i. Their status as Legally and Ordinary Residents is called into question.
 - ii. They cannot freely leave and enter the Cayman Islands and need to apply for and be granted re-entry stamps.
 - iii. Their stay on the Island is limited to a maximum 6 month period.
 - iv. Fees must be paid to the authorities each time an extension (up to 6 months) is requested.
 - v. As a Jamaican Citizen, the 2nd Applicant has to apply for a visa to re-enter the Cayman Islands, this is only due to her description as a visitor.
32. It is therefore averred that the decision to class them as visitors is wrong in law. Under the Immigration Law there are the following types of visitors.
- i. Tourist Visitor. A person arriving in the Cayman Islands for a visit for no more than six months.
 - ii. Business Visitor. A person who has been issued with a business visitor permit under Section 54.
 - iii. Working Visitor, a person who has been issued with visa pertaining to section 54A.
33. While it might be contended that Section 67 creates a separate and distinct class of visitor, it is contended that this is not correct in relation to the Applicants' circumstances. PCW holders or WOL holders do not fall within the definitions of Section 66, yet they are not treated as visitors. If it is to be argued that PCW and WOL holders are treated as visitors, it is respectfully submitted that the CIO should confirm formally that they write to the Board and notify them of every PCW holder and WOL holder who has been granted permission to remain for more than 12 months.
34. The Applicants would contend that their ongoing classification as visitors is wrong in law and that they should be classified in the same way as PCW holders, namely lawful residents of the Cayman Islands awaiting a decision in respect to their application for Permanent Residence.
35. The Applicants, take further issue with their classification as visitors on the basis that the decision is:

Unreasonable

36. The Applicants are not visitors and should not be considered to be visitors by the CIO. The Applicants are residents of the Cayman Islands who were awaiting a decision on the 1st Applicant's PR application. The Applicants are in a very similar situation as to a PCW holder and a dependant and it does not seem that the authorities consider PCW holders (or their dependants) as visitors, nor should they therefore consider the Applicants as visitors. As a PCW holder is not a visitor they can,
- i. Freely leave and enter the Cayman Islands.
 - ii. Provided they satisfy the relevant criteria, apply for a PCW permit which if granted lasts for a period of 6 months and remain indefinitely.
 - iii. Have their dependant remain in the Cayman Islands without having to applying for a separate visa.
37. It is respectfully submitted that it is wholly unreasonable that the Applicants are treated any differently to that of a PCW holder (and their dependants), especially if one considers that the 1st Applicant has sufficient funds to maintain himself and the 2nd Applicant in the Cayman Islands.
38. It is contended that the decision to describe the Applicants as visitors does not satisfy the anxious / heightened scrutiny test. When one considers the circumstances of their case namely:
- The fact that they were awaiting a decision on a PR application.
 - That they propose to remain in the Cayman Islands for the rest of their lives.
 - Their own property.
 - Their only home is in the Cayman Islands.
 - The length of time that they have resided in the Cayman Islands.
 - That their normal place of abode is in the Cayman Islands.
- It is averred that the Applicants should have been considered and treated as residents of the Cayman Islands.
39. The Applicants would also aver that the decision to class them as visitors is a breach of Article 19 of the Cayman Islands Constitution. The decision of the CIO has to be lawful, rationale, proportionate and procedurally fair and by drawing such an illogical distinction between PCW holders (and their Dependants) and the Applicants, the CIO cannot be seen as acting in accordance with Article 19.
40. As the Applicants are awaiting a decision on the 1st Applicant's application for PR, it is averred that by classing them as visitors, this not only affects their status in the Cayman Islands, it also potentially affects any future applications they might wish to make, be it Naturalisation and / or the right to be Caymanian both of which depend on an extended period of residence in the Cayman Islands, and also their status in different countries.
41. The fact that the Applicants are classed as visitors meant that they had to leave the Cayman Island for a period of time, prior to the 1st Applicant's application being considered. If the Applicants' are away from the Cayman Islands for more than 450 days in a 5 year period or for more than 90 days in 12 month period, this could negatively affect any application for

naturalisation they may wish to make (Section 18 and Schedule 1, Paragraph 2 of the British Nationality Act 1981).

42. If the Applicants are not resident in the Cayman Islands and are visitors, it begs the question where are they resident. A real concern for the Applicants is if the Canadian authorities conclude that because the Applicants are not resident in the Cayman Islands they are resident in Canada thus potentially leaving 1st Applicant liable to pay taxes.

43. Therefore for the above reasons it is averred that the decision to characterise the Applicants status on the Cayman Islands as visitors as opposed to residents is unreasonable.

Irrational

44. Because of the fact that neither the Applicants, PCW holders nor WOL holders satisfy the requirements of Section 66, yet only the Applicants are held to be visitors it is contended that this distinction is irrational in the circumstances. The Applicants are being unfairly prejudiced by the decision of the CIO to classify them as visitors whereas PCW holders (and their dependants) are not equally disadvantaged. It is therefore submitted that this distinction is irrational and amounts to an error of law.

Procedurally Unfair

45. Section 19 of the Constitution makes it clear that every decision of public officials must be lawful, rational, proportionate and procedurally fair. It was incumbent on the CIO to notify the Applicant of his decision in regards to the letter of 11 April 2016. By the CIO failing to notify the Applicants or their Attorney's of the decision he reached in respect to the letter of the 11 April 2016, the decision is unlawful. The letter of the 11 April 2016 was delivered to the CIO via hand and email and therefore after considering matters and reaching his conclusion the CIO had a duty to respond to the request. By failing to respond to the request and making a decision which was not conveyed to the Applicants the CIO has acted unlawfully.

46. If it is the case that the CIO has not even considered the application of the Applicants' dated the 11 April 2016, it is submitted that the CIO has been acting, disproportionately, irrationally and unreasonably and therefore the decision of the unknown Immigration Officer on 27 August 2016 is unlawful.

47. Furthermore and in the alternative, if it is accepted that the CIO does not have power to describe the Applicant's as anything other than a visitor the following is submitted:

Breach of Article 9 of the Constitution and Article 8 ECHR

48. The Applicants would contend that the decision to classify them as visitors affected their right to a private life in the Cayman Islands. The Applicants have friends and a home in the Cayman Islands. They have been resident in the Cayman Islands for over 10 years. When one considers their strong ties to the Islands, the fact that they were continually being granted visas for less than 6 months and the fact that PCW holders were treated substantially better than they were, it is averred that this position cannot be reasonable justified in a democratic society and is

sufficiently disproportionate as to amount to a breach of their protected rights. It is therefore contended that their protected rights are being breached by the ongoing decision of the CIO.

Failure to take over the running of the PR system from the Board.

49. Section 3 of the Law clearly states that the role of the CIO (and other Immigration Officers) is to carry out the Law. On 26 October 2013 Section 14 (a) of the Immigration (Amendment) (no 2) Law 2013, amended Section 29 of the Immigration Law (2013 Revision so that Section 29 (1) now read,

(1) The Caymanian Status and Permanent Residency Board and the Chief Immigration Officer may grant to non-Caymanian applicants

(a) the right to reside permanently in the Islands, to persons who have been legally and ordinarily resident in the Islands for a minimum period of eight years; and

(b) the Residency and Employment Rights Certificate, to spouses of Caymanians.

50. That power has been maintained in the 2014 Revision and also the 2015 Revision of the Law. It is the duty of the CIO to carry out the Law and by failing to take over responsibility for the PR system which he clearly had the power to do after the 26th October 2013, the CIO can be seen as acting unlawfully.

51. The Applicants would aver that the decision not to take over the PR system is unlawful in that the CIO has the power to make decisions in regards to these matters and has failed to do so within a reasonable period of time and for the same reasons as set out in paragraphs 22 – 30 the actions or inactions of the CIO are unlawful.

52. The Applicants would further contend that the CIO by failing to take over the running of the PR system from the Board, the CIO has given approval to the unlawful moratorium imposed by the Board. Therefore this approval it is averred is an act of *ultra vires* in that the CIO is not carrying out his statutory powers as set out in Section 3 of the Law.

DAMAGES

53. The Applicants will seek compensation in relation, but not limited to:

- Injury to feelings.
- Loss of enjoyment of their property.
- The costs associated with having to book flights and leave the Cayman Islands.
- Other associate loses and potential future loses which have arisen as a result of the Respondents actions.
- Costs.

54. The Applicants rely upon the figures claimed in their 2nd Affidavits which set out their losses.

CONCLUSION

55. For the reasons set out above, the Applicant respectfully invites the Court to judicial review the decisions of the Respondents and grant relief where appropriate.

HSM CHAMBERS
HSM CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 189 OF 2016

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW UNDER ORDER 53 OF THE GRAND COURT
RULES 1995

IN THE MATTER OF THE DECISIONS OF THE CAYMAN STATUS AND PERMANENT RESIDENCY BOARD
AND THE CHIEF IMMIGRATION OFFICER
BETWEEN

BRADLEY CARPENTER

1st Applicant

-and-

ELAINE SPENCE

2nd Applicant

-v-

THE CAYMANIAN STATUS
AND PERMANENT RESIDENCY BOARD

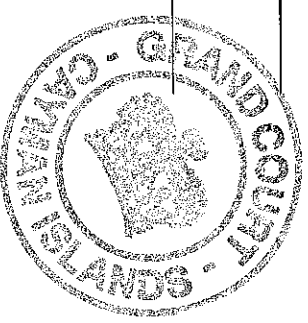
1st Defendant

-and-

CHIEF IMMIGRATION OFFICER
OF THE CAYMAN ISLANDS

2nd Defendant

ORDER



BEFORE THE HONOURABLE MRS JUSTICE MANGATAL

Date of Hearing: 9 November 2016

UPON HEARING Mr. Alastair David of Counsel on behalf of the Applicant and Ms Dawn Lewis, Crown Counsel, on behalf of the Respondents; and

UPON READING the affidavit of Mr. Brad Carpenter sworn on 7 October 2016 and the grounds set out in the Applicants' Application for Leave to apply for Judicial Review,

IT IS HEREBY ORDERED THAT:

1. The Applicant is granted Leave to apply for Judicial Review upon the grounds stated in the application and in the Affidavit of Brad Carpenter but that the relief sought be limited to the following:
 - a. A declaration that the following contested decisions by the Respondents:
 - i. The failure to conclude Brad Carpenter's application within a reasonable period of time; and
 - ii. The decision to classify the Applicants as visitors and not to issue 6 month permission to remain and re-entry stampswas unlawful.
 - b. An order quashing the Applicants status as visitors.
 - c. A declaration that the Applicants have been 'legally and ordinary' residence in the Cayman Islands since 18 October 2005 and 14 August 2006.
 - d. An order for the Respondents to pay the Applicants damages resulting from the Respondents misconduct or inaction.
 - e. An order that costs of and incidental to this application may be paid by the Respondents.
2. Costs in the cause.

Dated: 9 November 2016

Filed: 11 November 2016



JUDGE OF THE GRAND COURT



FILED BY HSM CHAMBERS
68 FORT STREET

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 189 OF 2016

B E T W E E N:

BRADLEY CARPENTER

1st Applicant

-&-

ELAINE SPENCE

2nd Applicant

-V-

CAYMANIAN STATUS
AND PERMANENT RESIDENCY BOARD

1st Respondent

-&-

CHIEF IMMIGRATION OFFICER
OF THE CAYMAN ISLANDS

2nd Respondent

AMENDED ACKNOWLEDGMENT OF SERVICE

If you attend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

IMPORANT. Read the attached accompanying direction and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly. THIS FORM MAY HAVE TO BE RETURNED.

1. State Respondent's name and address:--

The Attorney General, Fourth Floor, Government Administration Building, 133 Elgin Avenue, George Town, Grand Cayman

2. State whether the Respondent intends to contest the action.

Yes

No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Application is acknowledged accordingly.

Respondent's Signature

Dated this day of 2016

See overleaf

PARTICULARS OF DEFENCE

1. *[Here set out in numbered paragraphs the grounds upon which the Plaintiff claims that the Defendant is indebted to him or is liable to pay damages to him]*

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2016

B E T W E E N:

BRADLEY CARPENTER

1st Applicant

-&-

ELAINE SPENCE

2nd Applicant

-V-

CAYMANIAN STATUS
AND PERMANENT RESIDENCY BOARD

1st Respondent

-&-

CHIEF IMMIGRATION OFFICER
OF THE CAYMAN ISLANDS

2nd Respondent

ACKNOWLEDGMENT OF SERVICE

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IMPORATANT. Read the attached accompanying direction and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly. THIS FORM MAY HAVE TO BE RETURNED.

1. State Respondent's name and address:-

The Chief Immigration Officer, Department of Immigration, P.O. Box
1098 Grand Cayman KY1-1102, Cayman Islands

2. State whether the Respondent intends to contest the action.

Yes

No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Application is acknowledged accordingly.

Respondent's Signature

Dated this day of 2016

See overleaf

PARTICULARS OF DEFENCE

1. *[Here set out in numbered paragraphs the grounds upon which the Plaintiff claims that the Defendant is indebted to him or is liable to pay damages to him]*

Acknowledgement of service of originating summons (0.10, r.5)

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF ORIGINATING SUMMONS**

The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the acknowledgment of service.
3. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
4. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Originating Summons)".
5. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
6. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
7. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
9. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 189 OF 2016

B E T W E E N:

BRADLEY CARPENTER

1st Applicant

-&-

ELAINE SPENCE

2nd Applicant

-V-

CAYMANIAN STATUS
AND PERMANENT RESIDENCY BOARD

1st Respondent

-&-

CHIEF IMMIGRATION OFFICER
OF THE CAYMAN ISLANDS

2nd Respondent

AMENDED ACKNOWLEDGMENT OF SERVICE

If you attend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

IMPORATANT. Read the attached accompanying direction and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly. THIS FORM MAY HAVE TO BE RETURNED.

1. State Respondent's name and address:—

The Chief Immigration Officer, Department of Immigration, P.O. Box
1098 Grand Cayman KY1-1102, Cayman Islands

2. State whether the Respondent intends to contest the action.

Yes

No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Application is acknowledged accordingly.

Respondent's Signature

Dated this day of 2016

See overleaf

PARTICULARS OF DEFENCE

1. *[Here set out in numbered paragraphs the grounds upon which the Plaintiff claims that the Defendant is indebted to him or is liable to pay damages to him]*

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 189 OF 2016

B E T W E E N:

BRADLEY CARPENTER

1st Applicant

-&-

ELAINE SPENCE

2nd Applicant

-V-

**CAYMANIAN STATUS
AND PERMANENT RESIDENCY BOARD**

1st Respondent

-&-

**CHIEF IMMIGRATION OFFICER
OF THE CAYMAN ISLANDS**

2nd Respondent

AMENDED ACKNOWLEDGMENT OF SERVICE

If you attend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

IMPORATANT. Read the attached accompanying direction and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

1. State Respondent's name and address:-

The Chairman of the Caymanians Status and Permanent Residence
Board. PO Box 1098Grand Cayman KY1-1102 Cayman Islands

2. State whether the Respondent intends to contest the action.

Yes

No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Application is acknowledged accordingly.

Respondent's Signature

Dated this day of 2016

See overleaf

PARTICULARS OF DEFENCE

1. *[Here set out in numbered paragraphs the grounds upon which the Plaintiff claims that the Defendant is indebted to him or is liable to pay damages to him]*

2. State whether the Respondent intends to contest the action.

Yes

No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Application is acknowledged accordingly.

Respondent's Signature

Dated this day of 2016

See overleaf

PARTICULARS OF DEFENCE

1. *[Here set out in numbered paragraphs the grounds upon which the Plaintiff claims that the Defendant is indebted to him or is liable to pay damages to him]*