

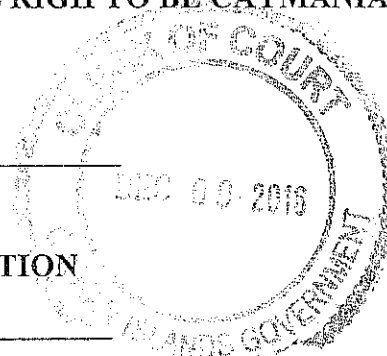
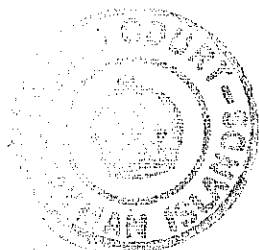
IN THE GRAND COURT OF THE CAYMAN ISLANDS

Case No. 237 OF 2016

IN THE MATTER OF AN APPEAL UNDER SECTION 17(2) OF THE IMMIGRATION LAW (2015) REVISION

AND IN THE MATTER OF AN APPEAL PURSUANT TO ORDER 55 OF THE GRAND COURT RULES 1995

AND IN THE MATTER OF AN APPLICATION FOR THE RIGHT TO BE CAYMANIAN BY NICHOLAS CHARLES GREAVES



NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on _____ 2016 at _____ am/pm or as soon thereafter as Counsel can be heard, by Counsel on behalf of Nicholas Charles Greaves for the following Orders:-

1. An Order of *Certiorari* to quash the said decision made by the Immigration Appeals Tribunal (“The Tribunal”) communicated by letter dated 16 November 2016;
2. that the Appellant’s application for the right to be Caymanian be approved;
3. further and/or in the alternative, an Order of *Mandamus* directing the Tribunal to rehear the Appellant’s application;
4. such further and other relief as the Court deems fit.

And an Order that the costs of and incidental to this Appeal may be paid by the Immigration Appeals Tribunal as the Court in its discretion sees fit.

AND FURTHER TAKE NOTICE that the Grounds of this Appeal are as follows:-

Background

1. On the 8 February 2016, the Appellant applied to the Cabinet pursuant to section 20(e) of the Immigration Law (2015) (Right to be Caymanian – Governor in Cabinet) for the right to be Caymanian.

2. On the 21 July 2016, the Caymanian Status and Permanent Residence Board (“the Board”) refused the application for the following reason:

“Upon reviewing the application the Board noted that the Appellant’s father, Daniel Charles Greaves, was granted Caymanian Status on 2 September, 2003, however it was of the view that his circumstances did warrant a recommendation for the Right to be Caymanian as the Appellant has other options available to reside and work in the Islands with progression to the Right to be Caymanian through other channels”.

3. The Appellant received a letter dated 25 July 2016 advising him of the Boards decision.
4. On 27 July, 2016 the Appellant wrote to the Chief Immigration Officer asking for confirmation of whether he had the “right to work” by virtue of being a British Overseas Territories Citizen (“B.O.T.C”) and pursuant to section 29(3) of the Immigration Law (2015) Revision.
5. By letter dated 24 August 2016, the Board wrote to the Appellant confirming that pursuant to section 29(3(d) of the Immigration Law (2015), the Appellant could submit an application for a work permit for the right to work. It was therefore confirmed, in this correspondence, that the Appellant had permanent residence without the right to work.
6. The Appellant was told by an Immigration Officer that the letter dated the 24 August 2016, meant that he had to apply for a work permit.
7. By letter dated 14 August 2016, the Appellant appealed the decision of the Board to the Immigration Appeals Tribunal. He appealed on the basis that the decision was a) erroneous in law, and b) unreasonable. This argument was based on the fact that the Appellant meets the criteria for the right to be Caymanian as set out in Section 23 of the Immigration Law (2015) Revision. Due to the fact that the Appellant was off island attending education, he did not apply for the right to be Caymanian, within one year from 21 December 2006. He did not know about this particular section until years later. The Appellant also outlined in his appeal statement that the Board did not consider his circumstances pursuant to section 22 (3) of the Immigration Law (2015) Revision which allows the Appellant, as a BOTC, to apply for the right to be Caymanian based on his connection with the islands.
8. By submissions dated 30 September 2016, the Appellant further outlined his grounds of appeal to the Immigration Appeals Tribunal.
9. By letter dated 16 November 2016, the Immigration Appeals Tribunal concluded that:

“There are no provisions in the Immigration Law (2015) Revision addressing the Appellant’s circumstances. As such the Tribunal is unable to grant the Appellant’s request, namely, that he be granted Caymanian Status. In his own submissions to the Tribunal, the Appellant acknowledged that he had missed his chance for persons in his position to apply for the right to be Caymanian.

The Tribunal further noted in the Appellant's grounds of appeal, the argument that the decision was against the principles of natural justice, but the Tribunal did not accept those arguments due to the provisions in the law allowing for the grant of Caymanian Status.

The criteria for the Board to consider in determining the recommendation of an Appellant to Cabinet, is not set out in the law, however, it is well known that such grants are reserved for persons who have contributed significantly to the islands. As such the Tribunal was also minded not to recommend to the Governor in Cabinet that the Appellant be granted the Right to be Caymanian.

Grounds of Appeal

- 1. The Respondent erred in law by committing and/or permitting a procedural irregularity capable of making a material difference to the outcome or the fairness of the proceedings contrary to natural justice.**

Particulars

- 1.1. The Respondent failed to have any regard to the Appellant's detailed Grounds of Appeal dated 30 September 2016.
 - 1.2. The Appellant's detailed Grounds of Appeal were filed with the Board and the Respondent on 30 September 2016 in accordance with the letter from the Board dated 14 September 2016 which stated that "*hearings shall be on the basis of written grounds and submission only.*" It was therefore, incumbent upon the Respondent to ensure that the Appellant's Grounds of Appeal dated 14 September 2016 which contained additional detailed particulars should form part of its decision making process. At no material time was the Appellant invited to make any further submissions.
 - 1.3. It is clear from the Board's letter dated 16 November 2016 that the Appellant's Grounds of Appeal dated 30 September 2016 were wholly disregarded, contrary to the principles of natural justice.
- 2. The Respondent erred in law by concluding that the Appellant could not apply for the right to be Caymanian based on the fact that there are no provisions within the Law addressing the Appellant's circumstances.**

Particulars

- 2.1. The Tribunal erred in law by concluding that since there were no provision in the Law addressing the Appellant's circumstances, that he could not be granted Caymanian Status. This is a finding erroneous in law based on the fact that pursuant to section 20, such a discretion exists. The Tribunal failed to adequately consider this argument and it is, therefore, contrary to the principles of natural justice.

3. **The Respondent erred in law by making a finding that the Appellant by his “own admission” had missed the chance to apply for the right to be Caymanian.**

Particulars

- 3.1. The Tribunal erred in law by making a finding that the Appellant had by his own admission missed the chance to apply for the right to be Caymanian. The Tribunal failed entirely to consider the detailed particular circumstances of the Appellant in considering whether or not he had knowledge of the time limit in section 23 of the Law.
4. **The Respondent erred in law because it failed to consider matters it was mandated to consider by section 22 (3) of the Law.**

Particulars

- 4.1 The Tribunal failed to consider in any detailed way, the Appellants connection with the islands pursuant to section 22 (3). At no material time was the Appellant informed by or on behalf of the Tribunal that the Tribunal would consider denying his application for the right to be Caymanian based on his perceived connection with the islands.
- 4.2 The Appellant was not invited to make any submissions as to his connections with the islands. In the instant matter no oral submission took place before the Tribunal, even though it was appropriate that the Tribunal should expressly invite such oral submissions from the Appellant in these circumstances. The Respondent therefore failed to accord the Appellant a fair hearing consistent with the principles of natural justice in circumstances where the Appellant had a reasonable expectation that a negative finding based on connections would not be made without an opportunity to make submissions to the Tribunal on that specific issue.
5. **The Respondent erred in law because it failed to consider matters it was mandated to consider by virtue of section 20 (e) of the Law.**

Particulars

- 5.1. The Tribunal acted unfairly and irrationally by making a finding that it is well known that such grants (pursuant to section 20 (e) of the Law) are reserved for persons who have contributed significantly to the islands.
- 5.2. The Tribunal failed entirely to consider what “contributed significantly” means in the context of the Appellant, and made an assumption based on pure speculation and a finding that is not in fact and in law, well known. The Tribunal failed to adequately consider the Appellant’s particular circumstances pursuant to section 20 (e).

- 5.3. The Tribunal failed at any material time to inform the Appellant that the Tribunal would interpret and apply this provisions in this particular way thereby depriving the Appellant as matters ensued of a fair hearing in accordance with the principles of natural justice.
 - 5.4. In the instant matter no oral submission took place before the Tribunal, even though it was appropriate that the Tribunal should expressly invite such oral submissions from the Appellant in these circumstances.
 - 5.5. By incorrectly applying this particular section of the Law in a unilateral and untransparent manner, the Tribunal created an appearance of bias in its deliberations.
6. The Respondent erred in law because it failed to consider the principles of natural justice.

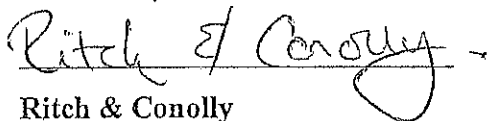
Particulars

- 6.1. The Tribunal makes a finding that the Appellant's arguments based on the principles of natural justice cannot be accepted since the Law allows for the grant of Caymanian Status
- 6.2. The principles of natural justice and any arguments thereto cannot be extinguished merely because there are provisions within the law granting Caymanian Status as alleged by the Respondent.
- 6.3. The Tribunal has failed to accord the Appellant a fair hearing consistent with the principles of natural justice in circumstances where the Appellant had a reasonable expectation of the application of natural justice.

Conclusion

7. In the circumstances, the Tribunal acted irrationally, unfairly, unlawfully, erroneously, and in a manner that was ultra vires its statutory duties and responsibilities. Accordingly, the decision of the Tribunal should be set aside for substantial wrong and miscarriage of justice so that the Appellant's application can be reheard in accordance with law.
8. The Appellant reserves the right to rely on further Grounds of Appeal.

DATED: 9th day of December 2016



Ritch & Conolly

Attorneys for the Appellant

TO: The Clerk of the Court

AND TO: **The Chairman**
The Immigration Appeals Tribunal
Government Administration Building
Elgin Ave
George Town
Grand Cayman