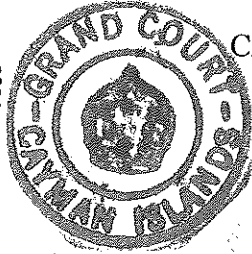


(0.53, r.3)

Application for Leave to Apply for Judicial Review



THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 130

In the matter of Section 16(11) of the Immigration Law (2015 Revision) that the Chairman of the Immigration Appeals Tribunal gives a Decision of the Appeal filed on 23<sup>rd</sup> February, 2010 within a reasonable time.

And in the matter of an application for Permanent Residence and Employment Rights by Lucas Augusto Duffis Britton

BETWEEN: LUCAS AUGUSTO DUFFIS BRITTON Applicant  
AND: CHAIRMAN OF THE IMMIGRATION APPEALS TRIBUNAL Respondent

30<sup>th</sup> August, 2017 29:30 dr

EX-PARTE APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

TO: The Clerk of the Court  
AND TO: The Attorney General of the Cayman Islands

*Name, address and description of applicant:*

Lucas Augusto Duffis Britton  
c/o Facey-Clarke & Associates Ltd.  
Unit 119, Elizabethan Square  
P.O. Box 2545  
Grand Cayman KY1-1104  
Cayman Islands

*Judgment, order, decision or other proceeding in respect of which relief is sought:*

The relief sought is also stated in the draft Notice of Originating Motion appended hereto.

The proceedings in which relief is sought are as follows:-

**BRIEF SUMMARY OF CASE**

1. On 11<sup>th</sup> March, 2005, the Applicant Mr. Lucas Augusto Duffis Britton (hereinafter referred to as “the Applicant”) applied to the Caymanian Status & Permanent Residency Board (hereinafter referred to as “the Board”) for the right to remain and work in the Cayman Islands under Section 29(1) of the Immigration Law (2003 Revision).
2. The Board refused the application on 23<sup>rd</sup> February, 2010. The Applicant appealed the Board’s refusal on 10<sup>th</sup> March, 2010. Instead of handing down his decision within a reasonable time, the Chairman of the Immigration Appeal’s Tribunal (hereinafter referred to as “the Tribunal”), has over the past 7 years, written to the Applicant on several occasions requesting information that was either already provided to them or he would ask for information relative to any change in circumstances. The Applicant would provide this information within the time frame given. It has been 7 years now since the Applicant has been waiting on the Tribunal to make a Decision, whether his appeal is successful or denied.
3. Recently, it has been broadcast over the media that the Government was going to deal with the back log of applications for permanent residency. When the Applicant received an email on 25<sup>th</sup> April, 2017 from the Secretary of the Tribunal attaching their letter dated 24<sup>th</sup> April, 2017, he thought a decision was made.
4. Unfortunately, and to his disappointment, the Tribunal continues to request that the Applicant submits details of any change of circumstances no later than 28 days from the date of this letter (i.e. 24 April 2017, not even from the date the email was sent on 25<sup>th</sup> April, 2017).

5. The Applicant feels that he has been harassed and or provoked by the Tribunal and does not feel that he should continue to provide any further information to the Tribunal and the Tribunal should be prevented from doing so and hand down their decision based on information that was already provided to them.
6. The Tribunal has a legal obligation to hand down their decision within a reasonable time and 7 years is excess of what the common law considers as a reasonable time.

#### **DELAY BY THE IMMIGRATION BOARD**

7. Despite the fact that the Applicant submitted his application to the Board on 11<sup>th</sup> March, 2005, the Board took over five years (i.e. 23<sup>rd</sup> February, 2010) to notify the Applicant that his application was denied. By this time, the 2003 Immigration Law had been replaced and the Board made their decision and made reference to an application pursuant to Section 30(1) of the Immigration Law (2009 Revision)
8. The only reasons given for the refusal was that the Applicant did not make the required score based on a point base system that was introduced under the Immigration Regulations 2009.
9. On 10<sup>th</sup> March, 2010, the Attorney for Applicant filed notice of appeal against the Board's decision on the Tribunal and requested details of how the Applicant's score of 87 points was calculated as well as reasons for the refusal. To date, the Tribunal has not given any reasons how it arrived at the 87 points. The Board was also notified of the Appeal.

**LIGITIMATE EXPECTATION TO ATTEND HEARING OF APPEAL**

10. On 28<sup>th</sup> April, 2010, the Tribunal provided the Applicant with a Statement outlining reasons for the refusal of his application and invited the Applicant to indicate whether he wished to attend the hearing of his appeal.
11. On 8<sup>th</sup> June, 2010, by way of letter to the Tribunal, the Applicant informed the Tribunal that he intended to attend the hearing of his appeal and requested that he be informed of the hearing date.
12. On 24<sup>th</sup> August, 2010, the Applicant wrote to the Tribunal and amongst other things, made inquiries as to when his appeal would be heard so he could make arrangements to attend with his attorney.
13. On 26<sup>th</sup> August, 2010, the Tribunal sent an email to the Applicant's attorney acknowledging receipt of letter of 24<sup>th</sup> August, 2010 requesting date and time of the appeal hearing.
14. On 6<sup>th</sup> September, 2010, the Tribunal sent another email to the Applicant's attorney allowing a date to be set for the hearing of the appeal. The said email also states that the hearing will only be based on information previously filed with the Tribunal and with the Immigration Department. The email went on to say "**as soon as a date is set, you will be notified accordingly.**" ...

**DELAY AND DENIAL OF RIGHT TO A FAIR HEARING**

15. On 15<sup>th</sup> November, 2013, after the lapse of 3 years and 1 month, the Tribunal sent a letter to the Applicant which includes amongst other things, denying the Applicant

of his right to attend the hearing of his appeal and made reference to sections 16(2) and 16(7) of the Immigration (Amendment) (No. 2) Law 2013 which states “hearings shall be on the basis of written grounds and submissions only. **Therefore, you will not appear in person before the Tribunal.**”

**FURTHER DELAY BY THE TRIBUNAL**

16. On 15<sup>th</sup> November, 2013, after the lapse of 3 years and 1 month, the Tribunal responded the Applicant’s request of 10<sup>th</sup> March, 2010 that the Tribunal provide detailed reasons for the refusal of the application for permanent residence. The Tribunal took over 3 years to provide the Applicant with the Board’s reasons for the refusal of his application and gave the Applicant only 45 days (i.e. by 30<sup>th</sup> December, 2013) to provide detailed grounds of appeal. It is to be noted that the 45 days included week-ends and Christmas Holidays and is at a time when people in general are on vacation. This action was so unreasonable and unfair. In any event, the Applicant was able to provide detailed grounds by the deadline on 30<sup>th</sup> December, 2013.
17. On 6<sup>th</sup> January, 2014, the Tribunal acknowledged receipt of the detailed grounds of appeal and in that letter promised the Applicant he would receive a decision **with the least possible delay.**
18. On 11<sup>th</sup> June, 2015, the Tribunal confirmed that grounds of appeal were made out and at this stage **wrongly** stated that the Applicant had applied under the Immigration Law (2014 Revision) as revised by the Immigration (Amendment) Regulations, 2015. The Applicant, in fact, applied under the 2003 Immigration Law. This is manifestly unjust and unfair for the Tribunal to be applying yet another new law.

19. In the same letter of 11<sup>th</sup> June, 2015, the Tribunal gave the Applicant 60 days to provide a sworn affidavit with several documentation including bank letters, reference letters, evidence of local investment in a company/property, current employment, Caymanian connection and education. This information were already provided by the Applicant to the Board in his initial application on 22<sup>nd</sup> February, 2005 as well as to the Tribunal on 24<sup>th</sup> August, 2010 and 30<sup>th</sup> December, 2013 at their request. The Applicant submitted his affidavit with the documentation on 28<sup>th</sup> July, 2015 within the deadline given.
20. On 12<sup>th</sup> August, 2015, to the Applicant's disappointment, the Tribunal send another letter requesting a sworn affidavit by 30<sup>th</sup> October, 2015, to include evidence of his employment, education, local investment in a company, local investment in property, financial information such as bank letters, proof of contribution to the community, close Caymanian connection, country of origin and birth certificate. The Applicant once again provided the Tribunal with his affidavit with the documentation on 27<sup>th</sup> October, 2015 within the given deadline.
21. On 25<sup>th</sup> April, 2017, the send a further letter to the Applicant requesting a sworn affidavit of declaration showing any change in the Applicant's personal, professional and financial circumstances including, employment, further education, local investment in company, local investment in property, bank letter, proof of contribution to the community, close Caymanian connection, birth certificate and any other information and supporting documentation the Applicant considers relevant for the consideration of his appeal. The repeated request by the Tribunal is contrary to their earlier promise in their letter of 6<sup>th</sup> September, 2010 that the hearing will only be based on information previously filed with the Tribunal and with the Immigration Department.

**UNFULFILLED PROMISSES MADE BY THE TRIBUNAL**

22. On 6<sup>th</sup> January, 2014, the Tribunal acknowledged receipt of the detailed grounds of appeal and in that letter promised the Applicant he would receive a decision **with the least possible delay**.
23. On 2<sup>nd</sup> November, 2015 by email, the Tribunal promised the Applicant through his attorney that he will be informed of a decision of his appeal **with the least possible delay**.
24. The Tribunal promised the Applicant that the hearing of his appeal would be based on information subsequently provided to itself and to the Board at the time of his application but continues up to 24<sup>th</sup> April, 2017 to request further and/or up-to-date information.
25. The Applicant feels that he is being harassed by the delay and unreasonable behaviour of the Tribunal and is asking this Honourable Court to make the orders sought herein.

***Relief/Remedy Sought:***

1. An Order of Mandamus - that the Tribunal, within 28 days, provides the Applicant with a written decision of his appeal against the decision of the Caymanian Status & Permanent Residency Board dated 23<sup>rd</sup> February, 2010, refusing his application for permanent residence/residency and employment rights certificate pursuant to section 30(1) of the Immigration Law (2009 Revision).
2. An injunction against the Respondent not to request any further documentation from the Applicant.

3. That the Tribunal delivers his written Decision to the Applicant's attorney within a reasonable time in accordance with Section 16(11) of the Immigration Law (2015 R) or no later than 28 days from the date of this Order.
4. That this ex-parte application for leave be dealt with administratively.
5. Any other Order, relief and/or directions as this Honourable Court deems fit including but not limited to the future conduct of these proceedings.
6. Costs.

Dated this 27<sup>th</sup> day of July, 2017

*Facey-Clarke & Associates Ltd.*  
Facey-Clarke & Associates Ltd.

This Application was issued by Facey-Clarke & Associates, Attorneys-at-Law for the Applicant herein whose address for service is that of the said Attorneys-at-Law, Unit 119, Ground Floor, Elizabethan Square, P.O. Box 2545, Grand Cayman KY1-1104, Tel: (345) 917-6351, Email: [mclarke@candw.ky](mailto:mclarke@candw.ky)

No. 6  
Notice of Originating Motion (0.8, r3)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 130 OF 2017

In the matter of Section 16(11) of the Immigration Law (2015 Revision) that the Chairman of the Immigration Appeals Tribunal gives a Decision of the Appeal filed on 23<sup>rd</sup> February, 2010 within a reasonable time.

And in the matter of an application for Permanent Residence and Employment Rights by Lucas Augusto Duffis Britton

BETWEEN: LUCAS AUGUSTO DUFFIS BRITTON Applicant  
AND: CHAIRMAN OF THE IMMIGRATION  
APPEALS TRIBUNAL Respondent

**DRAFT**

**NOTICE OF ORIGINATING MOTION**

**TAKE NOTICE** that a Judge of the Grand Court sitting in Chambers, at the Law Courts, George Town, Grand Cayman will be moved on \_\_\_\_\_ at \_\_\_\_\_ or as soon thereafter as counsel can be heard, by counsel on behalf of **LUCAS AUGUSTO DUFFIS BRITTON** for the following orders and/or directions:

1. An Order of Mandamus - that the Tribunal, within 28 days, provides the Applicant with a written decision of his appeal against the decision of the Caymanian Status & Permanent Residency Board dated 23<sup>rd</sup> February, 2010, refusing his application for Permanent Residence and Employment Rights Certificate pursuant to section 30(1) of the Immigration Law (2009 Revision).

2. An injunction against the Respondent not to request any further documentation from the Applicant.
3. That the Respondent delivers its written decision to the Applicant's attorney within a reasonable time in accordance with Section 16(11) of the Immigration Law (2015 R) or no later than 28 days from the date of this Order.
4. Any other Order, relief and/or directions as this Honourable Court deems fit including but not limited to the future conduct of these proceedings.
5. And for an order that the applicant be awarded costs of these proceedings.

**AND FURTHER TAKE NOTICE** that the **GROUND**S of this application are as follows:

**BREACH OF THE RULES OF NATURAL JUSTICE**

6. The Chairman of the Immigration Appeals Tribunal (hereinafter referred to as "the IAT") has failed and/or refused to fulfil an express or implied duty to give his decision to the Applicant's appeal against the decision of the Caymanian Status & Permanent Residency Board dated 23<sup>rd</sup> February, 2010, refusing his application for permanent residency and employment rights certificate pursuant to section 30(1) of the Immigration Law (2009 Revision) within a reasonable time and the IAT has abused its power and is in breach of Section 16(11) of the Immigration Law (2015 R) as well as the Common Law.
7. The IAT has deprived the Applicant of his right to a fair hearing pursuant to Section 16(6) of the Immigration Law (2009 Revision). This is a breach of the Applicant's fundamental right, an abuse of process and breach of natural justice.

8. The IAT's continued failure, delay and/or refusal to hand down a Decision within a reasonable time is in breach of the rules of natural justice in that the Applicant has been prejudiced by the IAT's non-action.

#### **PROCEDURAL IMPROPRIETY**

9. The IAT failed to follow the procedure expressly provided for under the 2003 Immigration Law which was the law in place when the Applicant submitted his application.
10. The IAT has caused prejudice and unfairness to the Applicant in applying subsequent laws such as Immigration Law (2013 Revision) and the Immigration Law (2015 Revision) which ultimately deprives the Appellant of his right under the previous law to be present at the hearing of the appeal, whether in person or by his representative.

#### **LEGITIMATE EXPECTATION**

11. The IAT erred in that it has failed to satisfy the legitimate expectation of the Applicant in that it has made promises to the Applicant that he would have a chance to attend the hearing of his appeal but later wrote to the Applicant to say that the decision will be taken in his absence.
12. The IAT was wrong in law in directing and/or authorising his servants or agents to inform the Applicant's attorney in the said email dated 26<sup>th</sup> August, 2010 that the hearing will be based on information previously filed with the Tribunal and the Immigration Department but continues up, to 24<sup>th</sup> April, 2017 to request further documentation and information from the Applicant.

13. The IAT was wrong in law in directing and/or authorising his servants or agents to send a letter dated 6<sup>th</sup> January, 2014 acknowledging receipt of detailed grounds of appeal on 30 Dec 13 and promising that confirmation of the Tribunal's decision would be remitted pursuant to s. 16(11) of the Immigration Law (2013 R) with least possible delay when it knew or ought to have known that no decision was forthcoming.
14. The IAT was wrong in law in directing and/or authorising his servants or agents to send an email dated November 2, 2015 to the Applicant's attorney that the Applicant would receive a decision with the least possible delay when it knew or ought to have known that no decision was forthcoming.
15. The IAT was also wrong in law in directing and/or authorising his servants or agents to send an email dated 25<sup>th</sup> April, 2017 to the Applicant's attorney requesting more information and that the Applicant would receive a decision with the least possible delay and knew or ought to have known that no decision was forthcoming.
16. The inexcusable delay by the IAT is frivolous and vexatious and is unfair and is a breach of the rules of natural justice.

#### **UNLAWFULLNESS**

17. The IAT erred in law in that he failed to follow the proper procedure required by Section 16(6) of the Immigration Law (2009 R) (i.e. failing and/or refusing to fix a time and date and to notify the Appellant of hearing of the appeal.

**ABUSE OF PROCESS - WRONG IN APPLYING SUBSEQUENT LAWS**

18. The IAT is wrong in law in applying subsequent Immigration Laws to the Applicant's application instead of applying the law that was in force at the time of the Applicant's application on 22<sup>nd</sup> February 2005 (i.e. The Immigration Law 2003 Revision).
  
19. The Applicant is at a disadvantage and has been prejudiced by the behaviour of the IAT who kept waiting, or so it appears, for the Immigration Laws to change and then seek to rely on the change and apply the current law to the requirements for the Applicant. For example Section 16(6) states "The law in force at the time of the rehearing by the Immigration Appeals Tribunal or the Board shall govern the proceedings under subsection (5). This is not only unreasonable but is oppressive, frivolous and vexatious and is wrong in law as it deprives the Applicant of his democratic right to a fair hearing to ask questions and to answer questions to clarify any part of his appeal process. The repeated request for additional information from the Applicant is oppressive and is an abuse of process.

**IRRATIONALITY (i.e. unreasonableness)**

20. The IAT has acted unreasonable by not making and handing down his decision in a timely manner and the delay has caused prejudice to the Applicant.

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21. The IAT failed to hand down his decision in a reasonable time and as a result thereof, prejudiced the Applicant to be assessed and considered under new legislation (i.e. Section 30(1) of the Immigration Law (2009 Revision) (the law that was in effect when the application was considered).

22. Alternatively, the IAT was wrong to apply the law at the time of considering the application instead of applying the law that was in effect when the application was made on 11<sup>th</sup> March, 2005. The relevant law at the time of application being the Immigration Law (2003 Revision).
23. The IAT has deprived the Applicant of his fundamental human right under section 7(1) of the Cayman Islands Constitution. (right to a fair hearing/trial)
24. Time for delivery of such decision in writing has elapsed pursuant to the Immigration Laws and the common law (i.e. reasonable time)
25. The Chairman of the Immigration Appeals Tribunal has failed and/or refused to deliver a copy of the written decision in a timely manner.

Dated this 27<sup>th</sup> day of July, 2017

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Facey-Clarke & Associates Ltd.  
Attorneys-at-Law for the Applicant

TO: The Clerk of the Court

AND TO: The Chairman of the Immigration Appeals Tribunal

AND TO: The Attorney General of the Cayman Islands

AND TO: The Chairman of the Immigration Board

This Notice of Originating Motion was issued by Facey-Clarke & Associates, Attorneys-at-Law for the Applicant herein whose address for service is that of the said Attorneys-at-Law, Unit 119, Ground Floor, Elizabethan Square, P.O. Box 2545, Grand Cayman KY1-1104, Tel: (345) 917-6351, Email: [mclarke@candw.ky](mailto:mclarke@candw.ky)