

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. || OF 2019

IN THE MATTER OF SECTION 17(2) IMMIGRATION LAW (2015 REVISION)
AND IN THE MATTER OF APPEAL AGAINST THE REJECTION OF THE APPELLANT'S
APPLICATION FOR ASYLUM

Legal Aid no: LACV2/2019

BETWEEN:

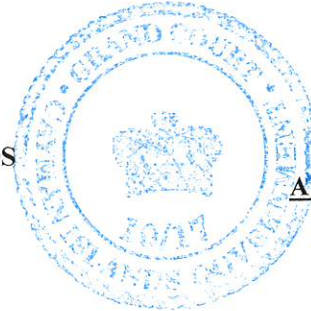
MIROIN ESTEVEZ MATOS

Appellant

-v-

IMMIGRATION APPEALS TRIBUNAL

Respondent



NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on _____ day of _____ 2019 at _____ a.m./p.m. or as soon thereafter as counsel can be heard, by counsel on behalf of MIROIN ESTEVEZ MATOS (the Appellant) for the following relief:

- I. That the decision of the Immigration Appeals Tribunal (the Respondent) dated 17 December 2018 be set aside;
- II. That the Appellant's application be remitted to the Respondent, to be considered and decided in accordance with the law;
- III. Extension of time within which to file this Originating Motion;
- IV. Such further and other relief that the Court deems fit.

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

1. Whereas the Appellant arrived in the Cayman Islands on 17th April 2017 by boat and applied for political asylum on 20th April 2017. Such application was refused by the Acting Chief Immigration Officer by letter dated 17th August 2017.
2. The Respondent notified the Appellant by way of a letter and Decision dated 17th December 2018 (received by the Appellant on 18th December 2018) that his appeal against the decision of the

Acting Chief Immigration Officer had been refused (the Decision). The appellant hereby appeals the Decision

3. The decision of the Respondent cited the following reasons for refusing the appeal:

“The question for consideration by the Tribunal is to consider whether there is a real risk of persecution of the Appellant for a convention reason or whether there is a real risk of serious harm to him were he to be returned to Cuba. The burden of proof is on the Appellant to show that the Respondent’s decision is incompatible with his rights under the Convention. The standard of proof the appellant has to achieve is to satisfy the Tribunal on the lower standard of proof that there is a reasonable degree of likelihood that he will suffer persecution or face the risk of serious harm if returned to Cuba.

In reaching its decision, the Tribunal took proper account of the Appellant’s hearing bundle, his oral evidence and copies of other documentation submitted to it in whatever form. Having reviewed the totality of the Appellant’s evidence, the Tribunal is not satisfied that the ‘political problems’ cited by the Appellant with the Cuban Authorities were sufficient to justify a finding that he had succeeded in proving to the required standard that he had a well-founded fear of persecution for a convention reason if returned to Cuba, be it by reason of membership in a social group, his political opinion or for any other convention reason. The Appellant a government employee who was not known to the authorities as someone ‘in opposition to the regime’. In fact, he seemed to have no fear of the authorities. He refused to sign a document he was ordered to sign by the authorities with no adverse consequence. He travelled to Havana with his sick child for surgery despite indication from the authorities to the contrary without being punished. He disobeyed his superiors without being sent to the Military tribunal as per the policy explained by him of the Cuban regime. And when asked about the type of threats he would face in Cuba, he said the first thing is to get me fired suggesting that losing his job was paramount in his mind to persecution. And even his response that the authorities drive in the area by his house to keep an eye on a troublesome neighbour when asked if the authorities went to his house to look for him would suggest that the Authorities went by his house to look for him would suggest that the Authorities did not go there specifically to look for him.

In the Tribunal’s view, the circumstances in which the Appellant finds himself and what he suffered did not give rise to any well-founded fear of persecution. We find no ‘[political problems]’ or degrading treatment or punishment which rises to the level of persecution.

Bearing in mind all the circumstances and the matters to which we have referred above, the Tribunal concludes that the appellant has not shown that he has a well-founded fear of persecution nor did the Appellant show that he would face any risk of suffering serious harm if returned to Cuba. Accordingly the Tribunal cannot impugn the decision of the Acting Chief Immigration

Officer as recorded in the Department of Immigration's letter dated 17th August and the Appellant's appeal is therefore dismissed."

4. This appeal is brought on the basis that, respectfully, the Decision of the Respondent is unlawful because:
 - a. The Decision is procedurally unfair;
 - b. The Decision contravenes principles of natural justice;
 - c. The refusal to provide legal aid for the Appellant to conduct his application and subsequent appeal to the Respondent constitutes a breach of the Appellant's rights under the Bill of Rights, as he could not receive a fair trial/hearing;

Procedural unfairness and natural justice

5. The Decision was procedurally unfair, for reasons that the Respondent:
 - a. failed properly to set out the appropriate test in the Decision as to whether the Appellant is a Refugee or not;
 - b. failed to state which evidence from the Appellant was accepted and which was not;
 - c. failed to make findings in relation to the Appellant's credibility;
 - d. made findings of fact inconsistent with the Appellant's evidence without citing any contradictory evidence or reasons for disregarding the Appellant's evidence;
 - e. failed to apply the guidance in the leading UK authority of *EF (Dissidents and Defectors) Cuba GC* [2011] UKUT 00343, and failed to give reasons for the same;
 - f. failed to have regard to, and/or failed to give any reasons for ignoring, international reports on Human Rights as referenced in the skeleton argument advanced on behalf of the Appellant;
 - g. failed to address, adequately, or at all, the effect that the following would have on the treatment of the Appellant upon his return to Cuba, specifically his treatment by authorities in light of his perceived defection, and whether such treatment would breach his rights under Article 3 of the Bill of Rights:
 - i. Defection/desertion from his role in the military;
 - ii. Leaving Cuba illegally
 - iii. The present asylum application, presumed to be within the knowledge of the Cuban Authorities by virtue of a Memorandum of Understanding between the Cayman Islands Government (CIG) and the Cuban Government, signed in 1999, by which the CIG undertakes to notify the Cuban Authorities within 7 days of any Cuban National entering the Cayman Islands illegally.

6. In failing to address the above, the Decision was critically defective, and prevents the Appellant from understanding fully the evidence upon which the Decision was predicated, and thus the reasoning behind the Decision.

Breach of Human Rights

7. The Appellant is entitled, through Article 7 of the Bill of Rights Freedoms and Responsibilities as enshrined in the Cayman Islands Constitution Order 2009, to a fair trial:

“(1) Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time.”

8. The Appellant is a Cuban National, who speaks little or no English. He has been required to conduct his own application to the Immigration Department, and subsequently Appeal to the Respondent, without the assistance of an attorney-at-law. He has been assisted by a Mackenzie friend, unqualified in law, and for whom English is a second language.

9. The Appellant has not had his right to a fair trial protected, and the policy refusing to allow Legal Aid in IAT matters is, it is submitted, in contravention of Article 16 of the Refugee Convention:

“ACCESS TO COURTS

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

*2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, **including legal assistance and exemption from cautio judicatum solvi.***

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.”

10. It is submitted that the failure to provide adequate legal assistance to the Appellant breaches his fundamental rights as he is unable fully to plead his case before the tribunal, or to receive appropriate advice in relation to the law governing the application and Appeal.

Conclusion

11. The Appellant avers that, in light of the foregoing, the decision is unlawful, procedurally improper, and/or was conducted in a manner inconsistent with the Appellant’s rights enshrined in the Cayman

Islands Constitution Order 2009 Bill of Rights, Freedoms and Responsibilities, and therefore stands to be set aside, and the matter remitted to the Respondent to provide a decision in accordance with law.

12. The Appellant seeks the court's leave to extend the time for filing this Notice of Originating Motion to 18th January 2019, according with the agreement between the Appellant's counsel and the Office of the Attorney General.

Dated the 18th day of January 2019.

McGrath Tonner
Attorneys at law for the Appellant

TO: The Clerk of the Court

AND TO: Office of the Attorney General
4th Floor, Government Administration Building
133 Elgin Avenue
George Town, Grand Cayman
Cayman Islands

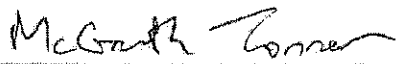
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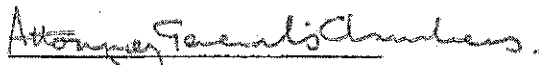
LISTING FORM

<p>Title of Proceeding:</p> <p style="text-align: center;">MIROIN ESTEVEZ MATOS <u>Appellant</u></p> <p style="text-align: center;">-v-</p> <p style="text-align: center;">IMMIGRATION APPEALS TRIBUNAL <u>Respondent</u></p>	<p>Cause No:</p>
<p>Plaintiff(s) and Attorney(s):</p> <p>Appellant – McGrath Tonner</p>	<p>Defendant(s) and Attorney(s)</p> <p>Respondent – Attorney General’s Chambers</p>
<p>Is a particular Judge seized of the matter:</p> <p>No</p>	<p>Type of application and Rule of Law pursuant to which it is brought:</p> <p>Appeal of IAT decision, Immigration Law s.17(2) and GCR O.55 r.3</p>
<p>Brief description of the substance of the application:</p> <p>Appeal against refusal of grant of asylum status</p>	<p>Legal issues to be argued:</p> <p>IAT decision was unlawful, procedurally improper, should be set aside</p>
<p>Material filed to date:</p>	<p>Full description of the nature and extent of affidavit and other material (including authorities) that will be delivered to the Judge in advance of the hearing:</p>
<p>Notice of Originating Motion, First affidavit of Khyllar Miller, with exhibits</p>	<p>Evidence from R: First Affidavit of Chair of IAT, with exhibits</p> <p>Skeleton arguments from both parties, agree bundle of authorities (est. 2 lever arch files)</p>

Has an order for cross-examination on affidavits made been/is an application for leave to cross-examine to be made?	Joint opinion of all participating attorneys as to reasonable length of the hearing:
N/A	1 day
Prospects of settlement before hearing:	Dates to avoid:-
N/A	<p>McGrath Tonner dates to avoid:</p> <p>January: 22-25 Feb: 7 – 12, 18 – 22 March: 5-6 April – 23 – 3rd May</p> <p>AG's chambers dates to avoid:</p> <p>Feb: 18, 20 March: 4 April: 29 – May 3</p> <p>All date ranges are 'inclusive'</p>

DATED: 18 January 2019


McGrath Tonner
MCGRATH TONNER
Attorneys-at-Law for the Appellant


Attorney General's Chambers
Attorney General's Chambers
Attorneys for the Respondent