

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO: 155 OF 2019**

**LACV 0136 of 2019**

**BETWEEN:**



**GREGORY BENT**



**APPLICANT**

**AND:**

**IMMIGRATION APPEALS TRIBUNAL**

**&**

**THE DIRECTOR OF WORKFORCE, OPPORTUNITIES AND RESIDENCY CAYMAN**

**RESPONDENTS**

**APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant	Gregory Bent, 297 Watershed Circle, Savannah, Grand Cayman, Cayman Islands
Judgment, order, decision or other proceeding in respect of which relief is sought	The decision of the Chief Immigration Officer of the Cayman Islands refusing to grant a further extension to the applicant to remain in Cayman Islands.  The failure of the Immigration Appeals Tribunal to hear and determine the Appeal of Gregory Bent against the Revocation as submitted on 4 <sup>th</sup> February 2019.
Relief Sought	a. An order of mandamus compelling the Immigration Appeals Tribunal to hear and deliver judgment upon the Applicant's Appeal against the Decision within 28 days of this Order.

- b. A order of mandamus compelling the 1<sup>st</sup> Respondent to allow the Appellant to remain living and working in the Cayman Islands until the conclusion of his Appeal against the decision.
- c. A declaration that the decision of the 1<sup>st</sup> Respondent in refusing to grant a further extension to the applicant to remain in the Cayman Islands is unlawful, irrational and disproportionate;
- d. A declaration that that failure of the 2<sup>nd</sup> Respondent to hear and deliver judgment on the Appeal of the Applicant within a reasonable period of time is unlawful.
- e. An order of prohibition preventing the Respondents from issuing a deportation order in respect of the Applicant.
- f. Damages.
- g. Such further or other relief as this Honourable Court shall deem appropriate
- h. All necessary and consequential directions
- i. Costs

Name and address of  
applicant's attorneys

KSG Attorneys at Law, 4<sup>th</sup> Floor Harbour Centre, 42  
North Church Street, George Town, Grand Cayman,  
P.O. Box 2255, KY1-1107

Signed



Dated

18/9/19

## **GROUNDINGS ON WHICH RELIEF IS SOUGHT**

These Groundings are supported by the affidavit of Gregory Bent.

### **Introduction**

1. This application seeks leave to apply for Judicial Review with respect to 2 principal matters:
  - a. the unreasonable delay of the Immigration Appeals Tribunal to hear and determine an Appeal (the "Appeal") filed by the Applicant on 4<sup>th</sup> February 2019 against the decision (the "Decision") made 6<sup>th</sup> December 2018 revoking his Residence and Employment Rights Certificate ("RERC")
  - b. the decision to refuse to allow the Applicant to continue to reside in the Cayman Islands with his wife and 2 minor children pending the determination of the Appeal.
2. The Applicant's case is that the failure to hear and determine his Appeal in a reasonable time:
  - a. Does not satisfy the anxious scrutiny test.
  - b. Amounts to a breach Article 9 of the Cayman Islands Constitution ("the Constitution") and/or in the alternative amounts to a breach of Article 8 of the European Convention of Human Rights ("ECHR").
  - c. Amounts to a breach of Article 19 of the Constitution.
  - d. Amounts to a breach of Article 6 of the ECHR.
  - e. Is irrational.
3. The Applicant's case with respect to the decision to refuse to allow him to continue to reside in the Cayman Islands with his wife and 2 minor children pending the determination of the Appeal;
  - a. Amounts to a breach Article 9 of the Cayman Islands Constitution ("the Constitution") and/or in the alternative amounts to a breach of Article 8 of the European Convention of Human Rights ("ECHR")
  - b. Amounts to a breach of Article 19 of the Constitution.
  - c. Amounts to a breach of Article 6 of the ECHR.

## **Relief Sought**

4. In respect to the complaints above the Applicant seeks the following relief:
  - a. An order of mandamus compelling the Immigration Board to hear and deliver judgment upon the Applicants Appeal against the Decision within 28 days of this Order
  - b. An order of mandamus compelling the Respondents to allow the Appellant to remain living and working in the Cayman Islands until the conclusion of his Appeal against the Decision.
  - c. A declaration that the decision of the 2nd Respondent in refusing to grant a further extension to the Applicant to remain in the Cayman Islands is unlawful, irrational and disproportionate;
  - d. A declaration that that failure to hear and deliver judgment on the Appeal of the Applicant within a reasonable period of time is unlawful.
  - e. An order of prohibition preventing the Respondents from issuing a deportation order in respect of the Applicant.
  - f. Damages.
  - g. Such further or other relief as this Honourable Court shall deem appropriate
  - h. All necessary and consequential directions
  - i. Costs

## **The Facts**

5. The Applicant has been legally resident in the Cayman Islands since 2005. He initially arrived in the Cayman Islands on a work permit and after entering into a relationship in 2009 he married his now spouse on 21<sup>st</sup> May 2011. In October 2011 the Applicant was granted a Residency and Employment Rights Certificate ("RERC") under Section 31 of the Immigration Law entitling him to lawfully live and work in the Cayman Islands.
6. After their marriage, the couple had 2 children Gregory and Jiana who are aged 7 and 3.
7. The couple purchased a property in Savannah, Newlands, in 2014 with the benefit of a mortgage and since the purchase of that property have lived there together as a family unit. The Applicant's spouse and children have never resided outside of the Cayman Islands and his spouse is in settled employment, his elder child attends school and all are heavily connected to their extended family and friendship networks in the Cayman Islands.

8. In February, 2018 the Applicant was convicted for the offences of possession of ganja with intent to supply and consuming ganja and sentenced to a period of imprisonment, with the sentence suspended.
9. As a result of his conviction, the Caymanian Status and Residency Board ("the Board") convened on the 19<sup>th</sup> July 2018 to consider the revocation of the RERC and deferred the decision for an internal investigation into the status of the Applicant's marriage.
10. On 6<sup>th</sup> December 2018 the Board reconvened and decided to revoke the RERC on the ground that he had been convicted of an offence under the laws of the Cayman Islands pursuant to a power given to them under Section 38(1) of the Immigration Law (2015 Revision).
11. At no stage of the process outlined above at paragraphs 9 and 10 was the Applicant invited to make representations with respect to the proposed revocation.
12. By letter dated 27<sup>th</sup> December 2018 the Applicant was notified of the decision and given notice of his right to appeal.
13. On 4<sup>th</sup> February 2019 the Applicant gave notice of Appeal and on 1<sup>st</sup> March 2019 the IAT provided an Appeal Bundle.
14. On 27<sup>th</sup> March 2019 the Applicant filed Grounds of Appeal, a Chronology and statements from the Applicant and his spouse in support of the Appeal.
15. From 27<sup>th</sup> March 2019 to the date of these grounds no further communication has been received from the IAT and particularly;
  - a. no request for further information has been received;
  - b. no notification of a decision has been given;
  - c. no written defence to the grounds of appeal has been received from the IAT.
16. Since the 6<sup>th</sup> December 2018 the Applicant's legal right to live and work in the Cayman Islands has been revoked and he has been required to regularly attend the Department of Immigration to obtain a visitor stamp to remain in the Cayman Islands.
17. On 29<sup>th</sup> August 2019 the Applicant was informed orally by an officer of the Department of Immigration that no further extensions to his visitor's visa would be granted and this he would have to leave the Cayman Islands forthwith.
18. On 6<sup>th</sup> September he was given a final 2 week extension to expire on 20<sup>th</sup> September 2019 after which he is deemed an illegal overstayer in the Cayman Islands unless he voluntarily leaves and is liable to prosecution for remaining illegally and deportation.

## **The Legislation**

### **The Cayman Islands Constitution Part 1**

#### **Article 9**

##### **Private and family life**

9. (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.*

#### **Article 19.**

##### **Lawful administrative action**

- (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.*

#### **Article 6(1) of the ECHR**

- (1) *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

## **Failure to Determine the Appeal**

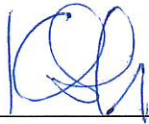
### **Unreasonableness**

19. The Applicant avers that the failure of the IAT to reach a decision with respect to his Appeal is wholly unreasonable in the circumstances.
20. The Appeal bundle was prepared by the Department of Immigration on 1<sup>st</sup> March 2019 and detailed grounds of Appeal were filed on 27<sup>th</sup> March 2019.
21. The IAT is not required to call evidence to the Appeal and effectively it is a decision to be made on the papers. Those papers have been with the IAT for 5 months. During those 5 months (and for 9 months in total), the Applicant has been unable to work in the Cayman Islands he has had to report regularly to the Department of Immigration and pay for extensions to his visitor's visa. Furthermore, he and his spouse and children have had to live under the cloud of the possible deportation of the Applicant.
22. The IAT is under a duty to reach a decision in a reasonable period of time and it is submitted that the failure to do so within the time to date falls foul of the anxious scrutiny test and therefore the decision is so unreasonable that no reasonable body properly informed could have acted in this way.
23. The Applicant submits that the failure of the IAT to reach a decision within a reasonable period of time amounts to a Breach of Article 19 of the Constitution. All acts of public officials must be lawful, rational, proportionate and procedurally fair and by failing to reach a decision to date, this failure cannot be seen as satisfying any of the requirements of Article 19.
24. The IAT is required to consider Article 9 as they are a public body and the consequences of the Board's failure to consider the Applicant's application have been set out at paragraph 21 above and in his affidavit.

## **Failure to Allow the Applicant to remain in the Cayman Islands pending Determination of his Appeal**

25. The failure to prosecute the Appeal of the Applicant in a timely manner has resulted in the applicant being unable to work and also at peril of being removed from the Cayman Islands.
26. The removal of the Applicant from the Cayman Islands is contrary to section 24 of the Cayman Islands Constitution 2009, Bill of Rights, Freedoms and Responsibilities, Part 1 ("the Bill of Rights") as it would constitute a disproportionate interference with the right to a fair trial as protected by article 7 of the Bill of Rights.

- a. The 2<sup>nd</sup> Respondent has failed to adopt fair procedural safeguards should it refuse to extend the right of the Applicant to remain in the Cayman Islands in breach of section 13 of the Bill of Rights in that the removal has not been carried out in compliance with Section 13(3)(b)&(d).
- b. The 2<sup>nd</sup> Respondent has failed to adopt fair procedural safeguards in in refusing to grant a further extension to the Applicant to remain in the Cayman Islands in breach of section 19 Bill of Rights.
- c. On a balance of convenience test, the Applicant should entitled to remain living and working in the Cayman Islands until the final determination of his appeal. He has been resident in the Cayman Islands since 2005, lives here with his wife and 2 young children and has adopted the Cayman Islands as his domicile and home.
- d. The Immigration Law must be read and given effect under s25 of the Bill of Rights in a manner that is compatible, so far as it is possible to do so, with the Applicant's rights under the Bill of Rights. As a result, the discretion of the 2<sup>nd</sup> Respondent to allow the Applicant to remain in the Islands must be exercised in compliance with Section 13(3)(b) and (d) of the Bill of Rights and in compliance with the public law duties inherent in the proper exercise of a discretion as particularised above.



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KSG Attorneys at Law