



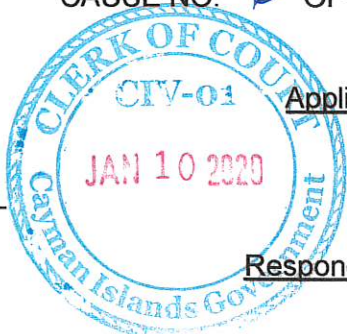
No. 53

Application for Leave to Apply for Judicial Review (0.53, r.3)

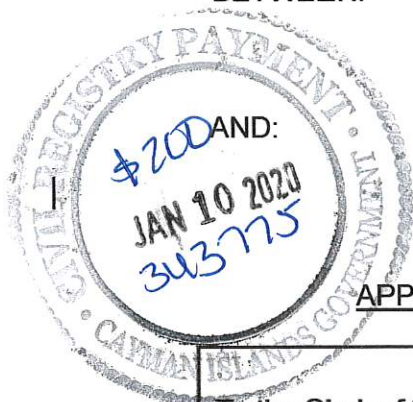
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 6 OF 2020

BETWEEN: SALLY ANNE SOUTHGATE



THE IMMIGRATION APPEALS TRIBUNAL



AND:

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman

<p>Name, address and description of applicant(s)</p>	<p>The Applicant, Sally Anne Southgate, is a British Citizen of the United Kingdom and Permanent Resident of the Cayman Islands as the dependant spouse of Peter Christopher Southgate a permanent resident of the Cayman Islands. She lives with her spouse in Ft. Lauderdale, United States of America where she is employed as a business woman. She currently resides at 704 SW 13th St. Fort Lauderdale Florida, United States of America.</p>
<p>Judgment, order, decision or other proceeding in respect of which relief is sought</p>	<ol style="list-style-type: none"> 1. The decision of the Immigration Appeals Tribunal dated 14th October 2019 requiring the Applicant to pay right to work fees from October 2014 to current on the basis that the Applicant was granted RERC pursuant to Section 30(6) of the Immigration Law 2011 and not as a person of independent means therefore there is a presumption that the holder of the RERC would continue to be employed, hence the requirement to pay an annual fee, if it were possible for the appellant to be granted PR and not hold an RERC it would have been clearly stated in the Law as it is for persons of independent means. 2. And further the conclusion of the Immigration Appeals Tribunal that the right to work cannot be set apart from the right to permanently reside.

--	--

GROUND ON WHICH RELIEF IS SOUGHT

1. The Applicant seeks leave to apply for judicial review on the basis that the Respondents decision on the granting of a successful appeal to the Applicant against an earlier decision of the Caymanian Status and Permanent Residency Board dated 31st August 2017 to revoke the Applicants right to permanently reside for non payment of right to work fees that fees were due and should be paid for the period October 2014 to current was either: (i) unreasonable, (ii) procedurally irregular (iii) unlawful or (iv) irrational, as it is clearly contradictory and perverse to find that there was no clear authority or provision regarding the impact of the Immigration (Amendment)(No.2) Law,2013 on persons who were granted permanent residence prior to 2013 and therefore the Applicants permanent residence should not be revoked on the basis of fees outstanding as this is arguably a retrospective use of the legislation but then determine that right to work fees must be paid pursuant to the provisions of the Immigration Regulations (2014 Revision) which similarly gave no clear authority or provision regarding the payment of right to work fees by persons who had been granted a right to work prior to 2014 on the basis that such fees would be payable only if the holder continued to be gainfully employed in the Islands as this also would constitute a retrospective use of the legislation and regulations applicable to the Applicants right to work and permanently reside in the Islands.

2. Further or in the alternative it is wrong in law to find that the Applicants right to work cannot be set apart from her right to permanently reside because she was initially granted the right to permanently reside as the dependant spouse of a permanent resident, namely Peter Christopher Southgate and was only granted a Residency and Employment Rights Certificate not pursuant to Section 30(6) of the Immigration Law (2011) as stated by the Respondent but pursuant to a separate and distinct section of the Immigration Law 2011 namely Section 30 (9) of the Immigration Law 2011 Revision which provides *inter alia* that "the spouse of a permanent resident may apply to the Board for a Residency and Employment Rights certificate which if granted will be subject to the same conditions as specified in subsection (6). This clearly provides for a two step system where an applicant is granted the right to permanently reside as a dependant spouse of a successful permanent residency holder with no right to work and if successful then issued with a Residency and Employment Rights Certificate under Section 30(9) of the Immigration Law 2011 Revision. To interpret the provisions of subsections 30 (6) and (9) of the Immigration Law 2011 Revision as presuming to require every permanent resident who holds a Residency and Employment Rights Certificate as being legally required to continue to work in the absence of an express provision and contrary to the Immigration Regulations 2010 Revision which required a fee to be paid only if the Applicant continued in gainful employment in the Islands is a clear misinterpretation of the Immigration Law 2011 Revision. A right to work is not the same as a legal obligation to engage in employment.

3. Further or in the alternative it is unreasonable and in breach of the rules of natural justice to advise the Applicant that she is entitled to reside permanently in the Islands as a dependant of her spouse who had been granted permanent residence and to subsequently specify upon the Applicants successful application for a Residency and Employment Rights Certificate that in order to continue in employment she was required to pay an annual right to work fee and then following the termination of her employment to join her husband in Ft. Lauderdale, United States of America's where his employment took him outside the Islands to now require her to pay such fee whether or not she was gainfully employed. In reliance on the letter from the Caymanian Status and Permanent Residence Board the Applicant agreed to move to Ft. Lauderdale in the United States with her husband and in doing so acted to her detriment as she is now being required to pay right to work fees from October 2014 to present. The Applicant had a legitimate expectation that the conditions under which she was granted the right to permanently reside as a spouse of a permanent resident holder as well as the conditions under which she was granted a Residency and Employment Rights Certificate were settled at the time of the grant and would not be changed at the whim of the Caymanian Status and Permanent Residency Board and/or the Respondent.

NOTE: The Applicant's Attorneys respectfully request a hearing of this application for leave to apply for judicial review pursuant to Order 53, Rule 3 (3) of the Grand Court Rules.