

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 17 OF 2020

IN THE MATTER OF SECTION 23(2) OF THE IMMIGRATION (TRANSITION) LAW, 2018 AND ORDER 55 OF THE GRAND COURT RULES

AND IN THE MATTER OF THE REVOCATION OF ANTHONY BLAIR JANSEN'S PERMANENT RESIDENCE AND RESIDENCY AND EMPLOYMENT RIGHTS CERTIFICATE IN THE CAYMAN ISLANDS.



ANTHONY BLAIR JANSEN



APPELLANT

-v-

CAYMANIAN STATUS AND PERMANENT RESIDENCY BOARD

1<sup>ST</sup> RESPONDENT

-AND-

IMMIGRATION APPEALS TRIBUNAL

2<sup>ND</sup> RESPONDENT



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**NOTICE OF ORIGINATING MOTION**

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**TAKE NOTICE** that the Court at the Law Courts, George Town, Grand Cayman will be moved on the \_\_\_\_\_ day of \_\_\_\_\_ 2020 at \_\_\_\_\_ a.m./p.m. or as soon thereafter as counsel can be heard, by counsel on behalf of Anthony Blair Jansen ("the Appellant") for an order that a decision of the Caymanian Status and Permanent Residency Board ("the Board") dated 17 March 2018 to revoke the Appellant's Residency and Employment Rights Certificate ("RERC") and the decision of the Immigration Appeals Tribunal ("the Tribunal") dated 27 December 2019 which concluded that the Appellant is required to pay an annual fee to maintain his RERC be set aside.

It is requested that the Grand Court declare that:

- i. Permanent Residence in the Cayman Islands granted pursuant to Section 29 (1) and Section 30 (1) Immigration Law (2007 Revision) ("the 2007 Law") and any subsequent Laws ARE separate and distinct to the right to work granted by RERC.

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- ii. The Appellant is not delinquent in respects to the payment of any annual RERC fees.
- iii. The Appellant is not required to pay an annual RERC Fee to maintain his Permanent Residence and Right to Work in the Cayman Islands provided that he is not employed in the Cayman Islands.
- iv. The non-payment of RERC fees does not fall within Section 38 (1)(m) of the Law as an RERC does not relate to the right to reside permanently in the Islands.
- v. The powers contained in Section 38 related to the revocation of PR and not to the revocation of RERCs.

It is requested that the Grand Court order that the decision of the Tribunal dated 27 December 2019 be remitted to the Tribunal to be reconsidered and decided according to the Law.

And for an order that the costs of and incidental to this Application may be paid by the Board / the Tribunal.

**AND FURTHER TAKE NOTICE** that the grounds of this Application are:

1. In December 2006, the Appellant applied for Permanent Residence of the Cayman Islands. At the time that he applied he was a Fund Accounting Manager.
2. In April 2007, while the Appellant's Permanent Residence application was being considered, he was transferred to Hong Kong.
3. In a letter dated 1 December 2008, the Board were contacted by the Appellant's representatives and were informed that he was residing outside of the Cayman Islands but that he was still pursuing in his application for PR.
4. On or around 7 March 2009, the Appellant's Permanent Residence application was granted and he was awarded an RERC. The Appellant was informed that "*to continue in employment as a Funds Accounting Manager, you are required to pay an annual fee equivalent to the Work Permit fee*".
5. At the time that the Appellant was granted PR, the relevant regulations in respect to the payment of RERC fees stated:

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For the holder of a Residency and Employment Rights Certificate engaging in gainful occupation, other than for a non-profit cultural, educational or charitable body.

An annual fee payable by the holder or his employer equivalent to that payable by a person authorised by a work permit under section 44 to engage in the same occupation

6. Despite the fact that the Appellant had informed the Board that he was no longer residing, and by implication, no longer engaging in gainful occupation in the Cayman Islands, on 17 May 2013, the Appellant was contacted by Immigration Department who enquired about his intentions in regards to his Permanent Residency with the Right to Work and they claimed he was delinquent in respects to CI\$18,000 in unpaid RERC fees as he had not informed the Department of his change of circumstances.
7. The Appellant Responded to the Immigration Department and informed them that:
  - i. He had not held employment in the Cayman Islands since he received his Permanent Residency.
  - ii. He did not agree with the Immigration Department's system of generating fees and asked for them to reverse the outstanding fees.
  - iii. If he obtained employment in the Cayman Islands in the future, the Department would be informed (and by inference the required fees would be paid).
8. In a letter dated 13 May 2014, the Board wrote to the Appellant telling him that they were minded to revoke his Permanent Residency / RERC.
9. The Appellant responded to the letter of 13 May 2014 informing the Department that he did not accept that he was delinquent in any fees and that it was not a condition of his PR that he would have to pay an annual RERC if he was not engaging in gainful occupation. This response was received by the Department on 2 June 2014
10. In a letter dated 17 March 2018, some 1383 days after the Board has received the Appellant's response to the letter of 13 May 2014, the Board revoked the Appellant's RERC claiming he owed CI\$81,250. Of the CI\$81,250, at least CI\$48,750 had accrued while the Board considered the response they received on 2 June 2014.
11. The Appellant first became aware of the revocation of his Permanent Residence on 1 February 2019.

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12. On 1 February 2019, the Immigration Department / Department of WORC informed the Appellant's representatives that the Appellant was actually delinquent in the sum of CI\$65,000.
13. A Notice of Appeal was submitted on behalf of the Appellant on 13 February 2019.
14. An Appeal Statement was received by the Appellant's representatives on 22 March 2019 and Grounds of Appeal were submitted to the Tribunal on 17 April 2019.
15. In a decision dated 27 December 2019, the Tribunal agreed that the Board erred in Law when revoking the Appellant's RERC.
16. The Tribunal carried out a *de novo* hearing and concluded that the Appellant's RERC should be returned to him. However the Tribunal further held that:
  - i. Permanent Residence and an RERC are not two separate categories and cannot be set apart.
  - ii. There was a presumption that the holder of an RERC would continue to be employed.
  - iii. If it was possible for an individual to be granted Permanent Residence without the right to work then that would be stated in the Law.
  - iv. The Appellant was directed to pay fees for the period from March 2014 to the date of the letter.
17. It is the Appellant's position that:
  - i. The Board erred in Law, when they concluded that the Appellant was delinquent in paying any annual RERC fee.
  - ii. The Board erred in Law when they concluded that the Appellant was delinquent in paying CI\$81,250 in annual RERC fees.
  - iii. The Board erred in Law, by not considering / interpreting correctly Section 114 (1) Immigration Law (2015 Revision) ("the 2015 Law") when they concluded that the Appellant was liable to pay an annual RERC fee despite the fact that they had been aware since December 2008 that the Appellant was not engaging in gainful occupation (or residing) in the Cayman Islands.

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- iv. The Board erred in Law and acted unreasonably by retrospectively applying the Immigration (Amendment) Regulations, 2013 to the Appellant's grant of Permanent Residence.
  - v. The Board erred in Law by revoking the Appellant's RERC when Section 38 of the Law did not provide them with the power to revoke his right to work.
  - vi. The Board acted unreasonably by granting the Appellant an RERC with a job title contained in it.
  - vii. The Board erred in Law, acted unreasonably, and contrary the rules of natural justice by not providing the Appellant with the appropriate disclosure in particular they did not provide:
    - The policies and procedures the Board have in respects to the revocation of RERCs.
    - Previous anonymized decisions of the IAT in regards to revocation of RERCS with particular reference to Section 114 of the 2015 Law.
    - The memo the Board wrote to the Chief Immigration Officer dated 23 August 2014 nor his response as referenced in the Appeal Statement.
18. Furthermore, it is the Appellant's position that the Tribunal:
- i. Erred in Law by concluding Permanent Residence and an RERC are not two separate categories.
  - ii. Erred in Law by comparing the Appellant's Grant of PR to that of a Permanent Resident Certificate Holder as a Person of Independent Means ("PIMS"). The Appellant was awarded PR in 2009 whereas PIMS was only introduced into Law with the Immigration (Amendment) Law, 2012. A far more appropriate comparator would have been those people granted PR before 1 January 2004 when a PR holder if they wished to be employed in the Cayman Islands would have to obtain a work permit.
  - iii. Erred in Law by failing to place any / sufficient weight on the transitional provisions in particular Section 114 of the 2015 Law.
  - iv. Erred in Law by failing to conclude that the Appellant had the right to maintain his Permanent Residence in the Cayman Islands without having to pay an annual RERC fee provided that he was not working in the Cayman Islands.
  - v. Erred in Law when they directed the Appellant was required to pay RERC fees from 2014 to the date of the decision.

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- vi. Acted in Breach of Natural Justice by failing to address the Grounds of Appeal in particular the Transitional Provisions as set out in Section 114 of the 2015 Law.
19. Accordingly, the decision of the Tribunal should be set aside and the appeal reheard in accordance with the Law.

Dated: **24 day of January 2020**

HSM CHAMBERS

**HSM Chambers**

**Attorney for the Appellant**