No. 6

Notice of Originating Motion (0.8, r.3)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 6/ **OF 2020**
APPLI: S.T. LEWIS: 1st: 20.3.2020

In the matter of an application by SIMONE TASHNE LEWIS to apply for a review of a decision made pursuant to the Immigration Law (2015R).

And in the matter of the dismissal of an appeal against the decision of the Caymanian and Permanent Residency Board by the Immigration Appeals Tribunal.

And in the matter of Section 17(2) of The Immigration Law (2015 Revision) an appeal against the decision of the Cayman Status and Permanent Residency Board and the Immigration Appeals Tribunal

SIMONE TASHNE LEWIS

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 2020 at or as soon thereafter as counsel can be heard, by counsel on behalf of SIMONE TASHNE LEWIS (the Applicant) for an order that the decision of the Immigration Tribunal ("IAT"), made in a letter dated 4 March 2020 upholding the decision of the Immigration Board made on 28 March 2018 to dismiss an application for the grant of permanent residency is wrong as a matter of Law and fact and that such decisions against the Applicant be set aside or alternatively that the matter be remitted to the IAT to reconsider the case pursuant to the applicable law in place at that time.

And for an order that the costs of and incidental to this appeal may be paid by IAT

And for an Order that to the extent that it is necessary that the Applicant be permitted to remain within the Cayman Islands and to continue her employment.

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

GROUNDS ON WHICH RELIEF IS SOUGHT

1. This matter was determined according to the Immigration Law (2015 Revision ((hereafter referred to as the "2015 Law"). The applicable regulations at the time were the Immigration Regulations 2017.

2. Sections 15 and 16 of the 2007 and 2010 Law provides, *inter alia*, as follows:

15. (1) Save as otherwise provided in this Law, any person aggrieved by, or dissatisfied with, any decision of the Chief Immigration officer under.....or of a Board other than a decision under section 14 may, within-

(a) twenty-eight days of the communication of the decision to him; or
(b) such longer period as the Chairman of the Appeals Tribunal may, for good reason shown, allow,

Serve notice on the Immigration Appeals Tribunal of his intention to appeal such decision.

(7) An appeal under this section.....may be lodged on the ground, or grounds, and no other, that the decision in question is-

(a) erroneous in law;
(b) unreasonable;
(c) contrary to the principles of natural justice; or
(d) at variance with the Regulations.

3. The manner in which the appeal is to be conducted is set out under section 16 of the Law.
4. Simone Tashne Lewis is a female nail technician who was born in Jamaica on the 13 September 1980. She considers that the structure and law to include the regulations now in place to consider making decisions, and here in particular, not to grant her residency, is unreasonable, contrary to natural justice and conflict with her fundamental human rights.
5. She operates her own business (40% interest) together with her mother, who has Caymanian Status, but has suffered considerable hardship due to a road traffic accident that caused her to suffer various injuries and impacted her ability to run her business as efficiently as she would like and thus to be as active as she would like to be. She has endeavoured to recover compensation from the third party and its insurers and was led to believe that steps were being taken to settle the claim by them, they having paid for the damage to her vehicle, but due to a

misunderstanding, that has not fully occurred. That matter is under review as a potential claim for damages, if one can be made, will recover substantial damages and might change her financial position.

6. The gravamen of the Appellants appeal is a singular failure to properly consider her documentation submitted in support of her application and later appeal for the grant of Permanent Residency and a proper application of the law. That is compounded by the IAT who has simply provided no reason or clear reasons for its outright dismissal of the Appellant's appeal.

7. Section 19(1) of the Constitution requires the Court to apply a "heightened scrutiny" requiring the decision-making body to justify its decision. In a letter from the IAT dated 4 March 2020, it is considered that no reason or proper reason has been provided by the IAT for refusing to consider the application.

8. In the cases of ***In the matter of an application for Permanent Residence by Hutchinson-Green/ In the matter of an application for Permanent Residence by Racz [2015 (2) CILR 75]*** heard at the same time by the Chief Justice, that Court held:-

> "...that the court had to apply a standard of heightened scrutiny in considering the appeal, as the right to lawful administrative action (as set out in s.19(1) of the Bill of Rights) was engaged, requiring a public decision-making body to make clear its reasons for reaching its conclusions, which the I.A.T. had failed to do, and reducing the usual margin of appreciation given to administrative bodies so that the evidential burden would be on the body to establish the rationality of its decision..."

9. There is a singular failure to properly set out the written reasons for the decision reached. This lack of transparency and thus opacity has plagued this immigration process since or about the time of the introduction of the new residency regime. Applicants are not properly able to understand the methodology, if any, applied by the Board or the IAT as the procedure was being rolled out. Many years have passed since the introduction of the new regime with a constant honing of the process but still there is a singular lack of transparency notwithstanding efforts being made by the legislature (and the Judiciary) to improve the process thus allowing applicants to understand what is required, how their applications are being assessed and the decision reached.

10. There are essentially three areas of concern in the Chairman's Appeal Statement where the applicant considers that there is no proper explanation and thus reason for how the points were reached. As a result, she is simply unable to understand and thus confirm that the methodology or correct criteria have been applied.

11. It is not clear from the letter dated 4 March 2020 (the "Letter") from the IAT that the decision reached was unanimous leading to the dismissal of the Appellant's appeal as set out in their letter. Unfortunately, the Letter does not set out the reason(s) justifying such a unanimous decision.

12. It gives no reasons why it considers that no grounds have been established and it does not set out if having carefully reviewed any documents what documents were reviewed.

13. For instance, did it review the current Employment Relations Department database and report and the Board's points calculations chart. There is no evidence that these were reviewed before the Immigration Board and none that it was reviewed before the IAT. If the IAT is going to say that it reviewed any material, then it must set out exactly what documents were reviewed.

14. It is stated that the maximum points attainable are 215. This on its face appears to be incorrect because some of the points cannot be allocated, this therefore affects the minimum points achievable and it would follow that at least one of the grounds have been made out under section 16(4) of the Immigration Law at which stage the IAT should have heard the matter *de novo*.

15. The reasons provided for the refusal of the IAT appears wholly inadequate as they do not provide full or any reasons in keeping with their duty to set out such reason(s).

16. Alternatively, a further complaint is that under section 7 of the application form for the grant of Permanent Residency, it is submitted that this criterium is divisive, misconceived and unconstitutional. Should one's community connections be greater based on the number of Caymanian family members a person may have.

17. The decision to create such a criteria to award points to the applicant who has Caymanian connections albeit through her mother and not her brother as well must be in breach of her human right not to be discriminated against and must be contrary (1) to Section 16 of Part 1 of the Bill of Rights, Freedoms and Responsibilities, (2) the Constitution of the Cayman Islands to give security to long term residents and (3) the intention within the Constitution to protect and care for all individuals and their basic human rights. Subsection (2) defines discrimination as "..affording different and unjustifiable treatment to different persons....on any ground such as....national or social origin. The concern is that many of these criteria are simply random and do not wholly support the underlying qualification of residency. It

should not matter whether a person has a Caymanian connection or not. The old law of 10 years residency should be the correct starting point.

18. Alternatively, it is of significance that pursuant to "*...16(5) The Chief Immigration Officer or the Board may, within twenty-eight days of the receipt of the grounds of appeal .....provide a written defence which shall be filed with ..... the Immigration Appeals Tribunal, ...and served on the appellant.* The Appellant has seen the Appeal Statement but no "defence". In any event it is considered that it is materially flawed as the potential points that could be awarded add up to 275 and not 215.

19. The applicant considers the issues raised here are of some considerable importance as the IAT are applying a method of dismissal of her application without any basis that begs explanation and thus on its face appears capricious. The law over the years has changed such that a fundamental principle in natural justice includes the "*audi alterem partem*" rule. The Court will note that these very basic provisions and rights have been eroded or removed from the relevant section of the Immigration Law. In order to avoid a proper consideration of this matter *de novo*, it has merely dismissed this matter and provided no written reasons for why it considers that there are no grounds, when in fact there is at least one ground. It is clearly set out that the points awarded by Immigration Board are insufficient but the IAT has not fully set out why it is that the points awarded are not sufficient but merely what it calculated they are after its assessment, which after a review make no proper sense. If such a proper consideration was carried out, then the Appellant is entitled to see any and all documents that were taken into consideration so that it can ensure that only relevant material was considered. Given the heightened constitutional duty to properly consider these matters the manner in which this matter has been dismissed appears wholly unsatisfactory.

20. The Applicant humbly request that this matter be remitted back to the Immigration Appeals Tribunal for a proper consideration of her application for the grant of Permanent Residency.

CHAMBERS
Clyde H. Allen
20 March 2020