

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2020

In the matter of an Appeal against the decision of the Immigration Appeals Tribunal

BETWEEN:

AUSTIN KAY FERGUSON

Appellant

AND:

THE 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 the ____ day of _____, 2020 or as soon thereafter as counsel can be heard, by counsel on behalf of Austin Kay Ferguson for an Order that:-

Interim Relief Sought

1. The decision of the Respondent not to grant permanent residency to the Appellant, as contained in its letter of 8 October 2020 (the "Decision"), be stayed pending the hearing of this Appeal and that the Appellant be permitted to continue working in the interim;

Relief Sought

2. The Decision be set aside in full and the application for permanent residency be reheard;

3. The rehearing shall consider the award of points for Factor 1(b) – Priority Occupation – notwithstanding that Cabinet has failed to publish a list of such occupations and the rehearing shall further consider the merits of the Appellant’s application in this regard;
4. The rehearing shall consider the equity in the Appellant’s property in the Cayman Islands for the purposes of determining his total investment and in the consideration of points for Factor 3 – Local Investment;
5. The rehearing shall consider the Appellant’s pension contributions either in respect of Factor 4a – Cash and Savings Held Locally – or under Factor 3 – Local Investment;
6. The rehearing shall apply maximum points in respect of Factor 8 – Demographic and Cultural Diversity;
7. The rehearing shall apply maximum points in respect of Factor 9 – Age Distribution;
8. Costs;
9. Such other Order as deemed fit in the circumstances.

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

1. In awarding zero points in respect of Factor 1b – Priority Occupation – the Respondent misdirected itself in law and the ensuing Decision failed to take account of relevant considerations and is irrational and/or disproportionate;

AND / OR

2. In awarding award zero points in respect of Factor 3 – Local Investment – the Decision failed to take account of relevant considerations and is irrational and / or disproportionate;

AND / OR

3. The application of the principle that “no credit will be given in respect of pension contributions” in the Decision in respect of Factor 4(a) – Cash and Savings Held Locally – is irrational in circumstances where the Appellant could have legally withdrawn funds from his pension account and placed in a savings account, but preferred to demonstrate his long-term commitment to the Cayman Islands by retaining his pension investment; and where such pension contributions were not then considered under Factor 3 as a local investment.

AND / OR

4. The application of Factor 8 – Demographic and Cultural Diversity – as described in the Regulations, is irrational and contrary to the explanation provided for the award of points;

AND / OR

5. The application of Factor 9 – Age Distribution – as described in the Regulations, is irrational and contrary to the explanation provided for the award of points.

Dated this 5th day of November 2020.



ETIENNE BLAKE
Attorneys at Law for the Appellant

TO: The Clerk of the Court

AND TO: The Immigration Appeals Tribunal
Government Administration Building, Box 105
133 Elgin Avenue, Grand Cayman KY1-9000
CAYMAN ISLANDS

THIS NOTICE OF ORIGINATING MOTION IS FILED BY Etienne Blake, Attorneys-at-Law for the Appellant, whose address for service is: 3rd Floor, Bayshore Centre, 31 Warwick Drive, George Town, P.O. Box 2496, Grand Cayman, KY1-1104, Cayman Islands