

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

THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2020

BETWEEN: GARY ANTHONY EVANS

PLAINTIFF

AND:

CAYMAN ISLANDS CUSTOMS & BORDER CONTROL

DEFENDANT



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(s)	Gary Anthony Evans c/o Clyde Allen, CHAMBERS, P.O. Box 31076 SMB, KY1-1205, Grand Cayman, Cayman Islands.
Judgment, order, decision or other proceeding in respect of which relief is sought	The Plaintiff seeks relief from the Decision letter dated 19 November 2020 of the Director of the Customs & Border Control Service.
<u>Relief Sought</u>	
The Plaintiff seeks an Order that the decision of the Director set out in a letter dated 19 November 2020 that the Plaintiff be removed from the Cayman Islands be quashed and that the Plaintiff be permitted to remain within the Islands, until such time as he has exhausted all of his legal rights to secure residency within the Islands.	
Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	Clyde H. Allen, CHAMBERS, P.O. Box 31076 SMB, KY1-1205, Grand Cayman, Cayman Islands.
Signed	Dated
	7.12.2020

GROUND ON WHICH RELIEF IS SOUGHT

1. The Plaintiff is concerned about the contents of a letter of the Director, Charles Clifford, dated 19 November 2020 titled 'Removal Notice'. In particular, it was determined that, as of 15 October 2019, Mr. Evans was residing in the Cayman Islands illegally pursuant to section 105(1) (c) of the CBC Law. An application was made for him to secure Residency with the Right to Work – Spouse of a Deceased Caymanian in or about 21 June 2019. That application was

refused on the 4<sup>th</sup> of September 2019. Thereafter, it appears that the Plaintiff was given until the 15<sup>th</sup> of October 2019 to leave the Islands. At the time of writing, the Plaintiff's attorney has not seen the refusal letter and the reasons for the decision of that Board on 4 September 2019 or any notice that he had to leave the Islands in 2019. The Plaintiff will be seeking disclosure of all documents and evidence relied upon to reach those various decisions.

2. The Plaintiff was married to Anna Lovita Ebanks on 23 January 1996. They had four children from that marriage, all of whom have Caymanian Status. By virtue of his marriage alone, he has been on Island for over 24 years. His youngest child is 16 years old. It would be a clear breach of his rights (various) of freedom of movement throughout the Cayman Islands and his right to reside in the Islands for him to be expelled from the Islands and the reason is set out hereafter. The Plaintiff will seek to rely upon section 13 of The Cayman Islands Constitution Order 2009 (the "Constitution Order") concerning movement of a person and the part relevant to my client is set out for ease of reference as follows:-

*"Nothing in any law or done under its authority shall be held to contravene this section to the extent that the law in question makes provision - ..... (d) for the imposition of restrictions on any person who is not a Caymanian or a permanent resident; .....and (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from the Cayman Islands unless the requirements specified in subsection (3) are satisfied; .....(3) The requirements to be satisfied for the purposes of subsection (2)(d)(iii) are as follows - (a) the decision to expel that person is taken by an authority, in a manner and on grounds prescribed by law; (b) that person has the right to submit reasons against his or her expulsion to a competent authority prescribed by law; (c) that person has the right, save where a court has recommended his or her deportation, to have his or her case reviewed by a competent authority prescribed by law; and (d) that person has the right to be represented for the purposes of paragraphs (b) and (c) before the competent authority or some other person or authority designated by the competent authority; ...."*

3. The Plaintiff seeks the right to submit reasons against his expulsion and for his application to be reviewed by a competent authority. In the first instance, he will require confirmation that an application by him pursuant to the Constitution Order will be considered by a competent authority prescribed by law and that he will not be removed from these Islands until his rights have been fully canvassed and exhausted and his representations are made on his behalf by Counsel. In order for there to be a fair hearing before a competent authority the Plaintiff would like to agree a structure for the consideration of the reasons against his expulsion, a time frame which to conduct such a hearing and to determine who is to hear and determine such an application.
4. Given that the Plaintiff is the father of four Caymanian children the last of which is 16 years old and was married to a Caymanian the Plaintiff will be seeking an application for Caymanian Status.

"Section 28 of The Immigration (Transition) Law, 2018 states as follows:

- (1) The Caymanian Status and Permanent Residency Board may, subject to section 30, grant the right to be Caymanian to any of the persons referred to in this section.

(7) The surviving spouse of a Caymanian who - (a) was married to the deceased for at least seven years; (b) immediately before the death of the deceased was not living apart

from the deceased - (i) under the decree of a competent court; (ii) under a deed of separation; or (iii) in circumstances where, in the opinion of the Board, the marriage had irretrievably broken down; (c) has been legally and ordinarily resident in the Islands immediately preceding the death of the deceased; and (d) either has not in any country been convicted of an offence or has in any country been convicted of an offence for which a sentence of imprisonment, not exceeding twelve months, has been imposed other than for non-payment of a fine unless - (i) such conviction has been quashed on appeal or has been the subject of a free pardon; (ii) the act or omission giving rise to such conviction would not be an offence if done or omitted in the Islands in similar circumstances; or (iii) the conviction is one which, in the interests of justice, the Board directs to be ignored for the purposes of this section, may apply to the Board for the grant of the right to be Caymanian.”

5. It will be submitted on behalf of the Plaintiff, *inter alia*, that, notwithstanding that he had resided in these Islands for many years before his marriage, was later married to a Caymanian lady for many years and had Caymanian children, he was unable to secure or regularise his reasonable rights and thus secure continuous employment as he was not, especially given his personal circumstances, granted the requisite permission and is concerned that he was not treated fairly. Now that the Court has made a determination that the body of the Plaintiff's wife cannot be found and that it be declared that she is dead, he is a surviving spouse of a Caymanian and it will be submitted that he should be permitted to make a section 28 (7) application. It is to be noted that there should be funds in the Estate, to include pension payments, since the declaration of the Court and that he has an entitlement to some of it.
6. In light of the Plaintiff's long history within the Islands and his family ties, no reasonable steps have been taken by the authority to assist Mr. Evans to regularise his stay within the Islands. There has been no finding by a competent court of law that Mr. Evans is overstaying and that his stay within the Islands is illegal. If there is any evidence of this then it is requested that the Defendant make full disclosure of any such findings.
7. The Plaintiff's immediate family all reside within the Cayman Islands and to remove him from these islands and to transport him elsewhere, notwithstanding the above, is to illegally separate him from his family and would interfere with a full reconciliation of his Cayman family. He has no ties with Jamaica and, if he were to be taken there, he would have no source of income or anywhere to reside.
8. The Plaintiff seeks confirmation that he will be permitted to exercise his section 13 rights as set out above under the Constitution Order and that he will not be expelled from these Islands until he has fully exercised those rights. Given the urgent nature of this application, the Plaintiff will seek an extension of time of 14 days to fully set out and particularise his grounds of appeal, whilst a timetable is being put in place.

