



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: ²⁰⁴ OF 2020

AND: IN THE MATTER OF SECTION 93(1 a-b) OF THE IMMIGRATION TRANSITION LAW (2018 REVISION)

AND: IN THE MATTER OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009 pursuant to Order 77A Rule 4 for a Declaration TO PROHIBIT THE EXPULSION FROM THE Cayman Islands of Erica Williams

AND: IN THE MATTER OF SECTION 13(1); 2(d)(iii) and 3((a-d) OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009

AND: IN THE MATTER OF SECTION 24 OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009

AND IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW pursuant to order 53 of the Grand Court Rules

BETWEEN: ERICA WILLIAMS	APPLICANT
AND: THE DIRECTOR ^{OF WORC} CUSTOMS AND BORDER CONTROL	RESPONDENT
AND: IMMIGRATION APPEALS TRIBUNAL	SECOND RESPONDENT

NOTICE OF MOTION

TAKE NOTICE THAT the Court at the Law Courts, George Town, Grand Cayman will be moved on _____ at _____ or as soon thereafter as counsel can be heard, by counsel for THE APPELLANT for the following relief namely :-

1. An Order setting aside the Decision of the Director of WORC, which decision by the refusal of the grant of Permission to Continue Work, when due to misleading and or false information from WORC caused the Appellant to rely on said information; to the detriment and denial of a right attributable by law to the Appellant.

BACKGROUND

The proceedings before the Immigration Appeals Tribunal to which this Appeal refers, was conducted over a period of time, commencing with the Respondent Tribunal having reviewed an Appeal Statement dated May 10 2018, which outlined the reasoning behind the decision by the Chief Immigration Officer, to refuse the application by the Appellant for the grant of Permanent Residency, and the Respondent Tribunal having reviewed the Notice of Appeal dated January 15 2018, including detailed Grounds of Appeal dated May 13 2019, and the Respondent determining,

that the appeal had been “unanimously dismissed”; firstly by way of a letter dated 13th of December 2019, on the ground that she failed to achieve the requisite points pertaining to that award. Further she was unaware, and only later came to realize her situation, by way of a letter dated March 25 2019 and received by her on May 6 2019, which advised that the deadline for her submitting grounds of appeal had expired. By way of background, Ms. Williams is a Kitchen Helper and a Jamaican national. She has been Legally and Ordinarily Resident in the Cayman Islands since the year 2008 working in the capacity as described above.

On June 8th 2017, the Appellant submitted an application for the grant of Permanent Residence under Section 30(1) of the Immigration Law (2015 Revision)

The maximum number of points awarded to the Appellant was “**fifty eight point five**” (58.5)

The Appellant is of the view, that not being afforded the opportunity to make representation, on account of not having received correct advice and communication, relative to the timeline of the processing and eventual outcome of her Residency and Employment Rights application, she was denied natural justice in seeking to make application for Judicial Review.

PROCEDURAL IRREGULARITY

1. **THAT** the Chief Immigration Officer at the time, erred in that he failed to consider or at all the desirability of granting permanent residence to the Appellant, on the basis that she is a Jamaican and that the decision to award “0” points under the heading “General”, to the Appellant, is unreasonable, on the ground that the Appellant **would** contribute to the “**balance in the social, [educational] and economic life of the country**”, with the Appellant having demonstrated that she is a productive, law abiding individual.
2. **THAT** on August 25 2020 when the Appellant called the Department of WORC and was told that her Application for Permission to Continue Work (PCW) application was “in process”; led her to reasonably believe that her application was in fact in process; as was represented to her and she did rely on this information to her detriment in that this caused her not to pursue clarification of her application’s status resulting in her rendering this Application for Judicial Review to be out of time and consequently Leave being now sought to avail by this application Out of Time.
3. **THAT** having heard nothing further, the Appellant took the decision to visit the offices personally on November 3 2020, and upon that visit was advised, that her Application was “**not yet looked at**”, as they have not looked at any applications for Residency, since the March Covid lockdown; again thereby causing the Appellant to wrongly but in fact reasonably justified to rely on the assertion that she could do nothing more but to await the determination, which reliance she placed to her detriment..
4. **THAT** on November 10 2020 the Appellant again returned to the said offices and was told that her Appeal against Refusal of Residency and Employment Rights, made to the Tribunal had been dismissed in February of 2020 and as a consequence; her PCW had been refused.

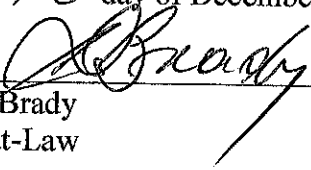
5. **THAT** information regarding this outcome was only received by the Appellant, after November 16 2020, when she advised her legal representative that she had been told, that the information concerned with the refusal by the Tribunal, had been previously sent to her legal representatives, who in turn advised her; that same had not been received by their offices
6. **THAT** clearly and contrary to the rules of Natural Justice and Law, there was placed upon the Appellant, the adverse, impossible and prohibitive position, of being enabled to make further application which would allow her to continue working, and due to no fault of the Appellant and incontrovertibly due to the unlawful and discriminatory conduct of WORC, in addition to being in disregard of the provisions contained in Section 24 of the **Cayman Islands Constitution Order 2009** and the rules of natural justice.

GROUNDS

1. **THAT** the Respondent acted unreasonably and facilitated an irregularity and the loss of or alternatively, the denial of an opportunity, and the Respondent further demonstrated professional insensitivity, and a breach of natural justice, in that, and the Respondent embarked upon this decision, when in fact the Appellant was unaware of the true status of her application, despite several attempts on her part to ascertain same and at all material times, it lay within the power of the Respondent to require that such an opportunity be afforded to the Appellant; in the interests of fairness.

AS SUCH the Appellant prays that the Decision imposed by the Respondent Director of WORC, should be overturned **AND THE APPELLANT PRAYS** that the **COURT** will exercise its powers under the Immigration Law (2015 Revision) and take into account, the circumstances that are current in relation to the Appellant and particularly, the fact that she has been a law abiding resident and a contributor to the tourism product of the Cayman Islands, therefore the failure to accurately advise and thus inform the Appellant, was a breach of natural justice and thereafter, the decision to refuse to grant the right of the final ninety days on the PCW facility, should be set aside as being wrong and in all the circumstances unreasonable.

Dated the 10 day of December 2020



Dennis E. Brady
Attorney-at-Law

TO: The Clerk of the Court
AND TO: The Chief Immigration Officer
AND TO: The Attorney General

THIS NOTICE OF MOTION was **FILED** by Dennis Brady, Attorney-at-Law for and on behalf of the Applicants whose address for service is that of their said Attorney-at-Law, Crown Square, Building B-6, Eastern Avenue, P.O. Box 11740, Grand Cayman KY1-1109, Cayman Islands.