



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO. 176 OF 2021

IN THE MATTER OF SECTION 23(2) IMMIGRATION (TRANSITION) ACT (2021 REVISION)

AND IN THE MATTER OF THE GRAND COURT RULES, ORDER 55, RULE 1

AND IN THE MATTER OF THE APPEAL OF KASSANDRA CARTAGENA DOMINQUEZ UNDER THE IMMIGRATION ACT (2015 REVISION)

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on 2021 at or as soon thereafter as counsel can be heard on behalf of Kassandra Cartagena Dominquez for the following relief:

1. That this Honourable Court grant leave to file this Notice of Originating Motion out of time.
2. Subject to the grant of leave by this Honourable Court, this Notice of Originating Motion is intended to replace the original Notice of Originating Motion filed on 28 November 2018 (within time) by the Appellant's then attorney, Mr Clyde Allen. The Applicant submits that the original Notice of Originating Motion was insufficiently clear and consequently she proposes to file a new Notice of Originating Motion rather than file and Amended Notice of Motion as proposed by McMillan J at a direction hearing on 21 January 2019. The Applicant proposes to file this new Notice for practical reasons only: the changes to the original Notice are so substantial and significant as to make the document extremely difficult to follow.
3. In the event that this Honourable Court refuses the application to file a new Notice of Originating Motion out of time, in the alternative, alternatively, the Appellant proposes to proceed with her appeal as set out in the Amended Notice of Originating Motion filed on 28 November 2018, Cause No. 233 of 2018.

4. That upon the grant of leave to file out of time, this Notice of Originating Motion do stand as the Appellant's grounds of appeal that the decision of the Immigration Appeals Tribunal (the **IAT**) dated 2 November 2021 to reject her application for permanent residency was:
 - (i) wrong in law; and/or
 - (ii) unreasonable; and/or
 - (iii) contrary to principles of natural justice; and/or
 - (iv) at variance and inconsistent with the Immigration Regulations 2017.
 - (v)
5. That until such time as the substantive appeal is heard and determined by this Court, the Appellant shall be permitted to remain and work in the Cayman Islands.
6. That the decision of the IAT dated 2 November 2018 to refuse the Appellant's permanent residency be set aside and remitted for reconsideration *de novo*.
7. Such further and other relief that the Court deems fit.

And for an Order that the costs of and incidental to this appeal may be paid by the Respondent.

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

A. Factual background is as follows:

8. An application for Permanent Residency was made to the Caymanian Status and Permanent Residency Board on 23 September 2016 by the Appellant through an agency, MPCs Ltd. (the **Board**)
9. At the time of the Appellant's application, the legislation in force, was the Immigration Act (2015 Revision) ("the **2015 Act**") and the Immigration Regulations (2017 Revision) (the **2017 Regulations**).
10. The Appellant's application was not dealt with until some two years later (2018). On 8 January 2018, the Board heard and refused the Appellant's application on the basis of her failure to score sufficient points under the points system to qualify as required by section 30(4) of the Immigration Act (2015 Revision). The points system requires an applicant to achieve a minimum score of 110 points for an application to be successful. The Board determined that the Appellant achieved a score of 95.39 points.
11. The criteria set out in the points system are contained within the Second Schedule of the 2017 Regulations.

12. On 17 January 2018, a notice of appeal was filed to the IAT against the Board's decision. On 23 March 2018 detailed grounds of appeal were submitted by the Appellant.
13. The grounds of appeal to the IAT set out the various aspects in which it was contended by the Appellant that the Board had (a) misdirected itself as to law and (b) had unreasonably failed to take into account information received from the Appellant in support of her application.
14. By a letter dated 2 November 2018, the IAT advised the Appellant that it had considered her appeal and that it had determined that the grounds of appeal were not established. Her appeal was dismissed.
15. On 28 November 2021 Mr Clyde Allen filed a Notice of Originating Motion supported by the Appellant's affidavit, to the Grand Court seeking an order setting aside the decision of the IAT and/or remit the matter back to the IAT for reconsideration.
16. It is understood that a directions hearing was heard in the Grand Court by McMillan J on 21 January 2019 (court listing form shows date 21.1.2019) where directions were given to both counsel for IAT and the Appellant.
17. By a letter dated 11 February 2019, the IAT provided written reasons for its decision to dismiss the appeal, stating that the Appellant was unable to establish any of the four grounds of appeal.
18. It is understood that the Mr Allen was provided with the IAT reasons sometime after 11 February 2019, however, the exact date is unknown. No further steps were taken to have this appeal heard before the Grand Court.
19. On 6 May 2021, McGrath Tonner on behalf of the Appellant, filed a Notice of Change of Attorney and a Notice of Intention to Proceed.

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

B. Grounds of Appeal

Points System

1. The Points System as set out in the 2017 Regulations is divided into 9 categories from which the threshold number of 110 points is required in order to be granted permanent residency.
2. The IAT considered and reviewed 4 categories which were being appealed by the Appellant. Those were:
 - a. Occupation (1b)

- b. Education (2b)
- c. Local Investment (3ii)
- d. Financial Stability (4b)

Factor 1- Occupation 1(b)

20. The Board awarded the Appellant zero (0) points for priority occupation (1(b)). The Board also scored the Appellant as a cook, when in fact she is a cashier. It is respectfully submitted that awarding zero (0) points under factor 1(b) is unreasonable and irrational. Neither the Immigration Department nor the Cayman Islands Government has provided any guidelines as to what occupations are considered priority occupations as per Schedule 2 of the 2017 Regulations.
21. In the decision provided by the IAT dated 11 February 2019, the IAT did not address this lacuna, because there is no arithmetical logic or justification for an Appellant to be awarded zero (0) points in this category without there being a list of priority occupations made available to measure an Appellant by. In circumstances such as where there has been an administrative failing to provide the list and points for priority occupations, it is submitted that this must be interpreted to the advantage of an Appellant rather than to the Appellant's detriment. Where the scheme of the points system envisages points being available to an Appellant in order to enable the Appellant to reach a threshold, it must, we submit, be unlawful for the Appellant to be deprived of the opportunity to score any points in that category. Absent the provision of a schedule of points, we contend that the Appellant must receive the full quota of points available rather than zero as appears to be the practice.
22. Additionally, the decision by the Board and the IAT to award no points in this category, is Wednesbury unreasonable in circumstances where:
- (i) the entire rationale of the scheme envisages that an Appellant must reach a point threshold to be awarded permanent residency;
 - (ii) that one category by which an Appellant can reach the points threshold is via priority occupation;
 - (iii) through an administrative failing, there is no applicable points schedule.
23. We submit that the decision to award no points to the Appellant is arithmetically irrational as well as being a breach of basic principles of natural justice. A system which inevitably places an Appellant at a disadvantage in obtaining the required minimum points to be awarded permanent residency is, we say, inherently flawed. The IAT has erred in law for not considering properly this issue and award the Appellant full points for this category (1b).

Factor 2- Education (2b)

24. The Appellant was awarded 5 out of 15 points in this category. The IAT erred in law and acted unreasonably when it failed to take into account the Appellant's vocational/technical certificate in computer technician studies, her academic diploma, her photo documentation and assistant accountant/secretary certificate which she obtained, having attended classes for a duration of three consecutive years in Columbia. These vocational/technical certificates were obtained some three years after her completion of high school. The Board graded the Appellant's certificate as equivalent to that of a high school diploma and failed to take her vocational/technical certificates into consideration. We submit that this is an unreasonable act by the Board and such act later supported by the IAT.
25. The Board also highlighted the Appellant's occupation as that of a cook, which carries a detrimental impact on this requirement, as categorising her as a cook does not enable her to achieve any points regarding her vocational/technical certificates achievement (which must be in line with her employment). The failure properly to categorise the Appellant's employment resulted in a loss of points by the Appellant in category 2(b). We submit that not considering the Appellants certificate which clearly meets the requirement as set out in Schedule 2 Education is an unreasonable act by the IAT.

Factor 3ii - Investment in locally licensed company

"I. Investment in property in the Islands"

26. The Board awarded the Appellant 5.98 points out of 30 points total.
27. The Board recognised the Appellants investment in property, Block 20D, Parcel 408H16 (private home), but failed to award the Appellant points under the second head of Factor 3, investment in locally licensed company.

"II. investment in locally licensed company"

28. The Appellant invested in Capelli Beauty Salon and was a director of the company for three years when she sold her 40% shares in Capelli and reinvested it the purchase of her home.
29. In March 2018 the Appellant invested in locally licensed company Artista Grooming Barber Shop Ltd. where she holds 40% shares of the company.
30. The IAT, before making its decision, and having received the company Register of Members and Directors, gave no consideration to the Appellant's 40% shares in Arista Grooming Barber Shop Ltd.

31. In all the circumstances, the Appellant was entitled to have her investment in a locally licensed company considered. It is submitted that the IAT acted unreasonably when it failed to award points in this category to the Appellant.

Financial stability 4(b)

32. In this category, the maximum number of points available are 30. In regard to factor 4(b) (*evidence of salary and income*), the Appellant was awarded 7 points for gross annual salary from employment, including her husband's gross annual salary. We submit that the Appellant should have been awarded 9 points as the combined gross annual salary/income for her and her husband was CI\$62,400. The IAT failed to consider the evidence provided by the Appellant which shows an annual combined salary of CI\$62,400, for the Appellant and her husband.

33. The Appellant, Kassandra Cartagena Dominquez humbly request that this Honourable Court grant leave as requested herein quash the IAT's decision and remit this matter back to the IAT for reconsideration.

Dated this 16th day of August 2021

Filed this 16th day of August 2021



McGrath Tonner
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court
And to: Chairman of the Immigration Appeals Tribunal
And to: Attorney General's Chamber