

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: ³⁵¹ OF 1998

IN THE MATTER of an application by Christopher John Bowring for leave to apply for an Order of Certiorari and/or Mandamus by way of Judicial Review pursuant to O.53

AND IN THE MATTER of the Immigration Law 1992

BETWEEN: Christopher John Bowring Plaintiff
AND: The Immigration Board First Defendant
AND: The Governor -In-Council Second 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

Christopher John Bowring
of P.O. Box 1641 GT, Parkway
Drive, West Bay Road, Grand
Cayman

Judgement, order, decision or other proceeding in respect of which relief is sought

The decision of the Immigration Board to refuse the Plaintiff grant a of Permanent Residence under Section 21 of The Immigration Law (13 of 1992) and the decision by the Governor-in-Council contained in a letter dated 3rd March 1998 not to allow the Plaintiff's appeal against the said decision of the Immigration Board.

RELIEF SOUGHT

Judicial review in the form of:

- (1) An Order of Certiorari to remove into the Grand Court of the Cayman Islands and to quash the said decisions made by the Governor-in-Council and the Immigration Board; and/or;
- (2) An Order of Mandamus to oblige the Governor-in-Council and the Immigration Board to reconsider their decisions in accordance with the law and/or to direct the Immigration Board to grant the Plaintiff permanent residence; and/or
- (3) A Declaration that the decision made by the Immigration Board to refuse a grant to the Plaintiff of permanent residence was unlawful and/or in breach of statutory duty; and/or
- (4) A Declaration that the Plaintiff was and is entitled to a grant of permanent residence; and/or

The Plaintiff requests an oral application for leave in view of the relief sought.

Names and address of applicant
Attorneys, or, if no attorneys acting
The address for service of the Applicant

Ian Boxall & Co., 3rd
Floor CIBC Financial
Centre, P.O. Box 1234,
George Town, Grand
Cayman.

Signed: *Ian Boxall &*

Dated: *June 3rd 1998*

GROUND ON WHICH RELIEF IS SOUGHT

THE FACTS

1. The Plaintiff has been ordinarily resident in the Cayman Islands since November of 1979. At all material times the Plaintiff has had a work permit under the Immigration Law 1992 permitting him to engage in gainful employment within the Cayman Islands,
2. By a letter dated 8th January 1996, the Plaintiff applied for the grant of permanent residence on the grounds that he had been ordinarily resident in Grand Cayman for over 16 years and has played a very active role in community affairs within the Islands.
3. By a letter dated June 20th 1997 the Plaintiff was notified that the Immigration Board had refused to a grant of permanent residence to the Plaintiff on the grounds of

protection of local interests and in particular those persons who are of Caymanian Status.

4. A notice of appeal to the Governor-in-Council under section 10 of the Immigration Law 1992 was lodged on behalf of the Plaintiff by Ian Boxall & Co. on 3rd July 1997.
5. The lodging of this appeal was acknowledged by a letter from the Clerk of the Executive Council dated 8th July 1997.
6. The decision of the Governor-in-Council was communicated to Messrs. Ian Boxall & Co. by a letter from the Clerk of the Executive Council dated 3rd March 1998 and received on the 7th March 1998.

THE LEGISLATION

7. Section 21(1) of the Immigration Law 1992:

“A person to whom permission to land, remain or reside has been granted may, at any time during the currency of that permission and not less than six months after the date of such grant, apply in the prescribed form and manner to the Board for permission to remain permanently in the Islands. The Board may refuse, defer, or grant any such application either unconditionally or subject to such conditions and limitations as it may think fit”

8. Section 24 of the Immigration Law provides that:

“A permanent resident shall not, unless exempted under section 27 or permitted under section 25, and subject to the preservation of any right existing immediately prior to the 15th October 1992, be entitled to engage in any trade business or gainful occupation without the issue of an appropriate work permit”.

9. Section 25 of the Immigration Law provides that:

- 25 (i) Where a permanent resident has been residing in the Islands for a continuous period of two years, the grant of such residence may be endorsed or entitlement varied by the Board so as to permit the permanent resident, on payment of the prescribed fee, if any, to engage in gainful occupation of such type, at such place, for such period and under such other conditions as may be specified by the Board.
 - (2) In granting such permission, the Board shall give consideration to the provisions of section 30(1).
 - (3) Any person to whom permission to engage in gainful occupation has been given under subsection (1) who engages

in any other gainful occupation or in a manner, place or contrary to the conditions specified is guilty of an offence and liable on a summary conviction to a fine of one thousand dollars and to imprisonment for six months, and the permission under subsection (1) to engage in gainful occupation shall forthwith be revoked by the Board.

10. Direction 27 (1) and (2) of the Immigration Directions (1996 Revision) provides:

27. (1) In considering applications for permission to reside permanently in the Islands, the Board shall attach weight to the fact that an applicant has invested in or acquired property in the Islands as evidence of that person's good faith and of his intention to reside permanently in the Islands.
- (2) The Board shall also take account of the desirability of granting such permission to applicants with different background and from different geographical areas, to maintain a suitable balance in the social and economic life of the country.

11. Direction 32(1) of the Immigration Directions (1996 Revision) provides:

32. (1) The Board shall determine any application for the grant of permanent residence by a person who has been normally resident in the Islands for a total period of at least fifteen years in accordance with section 20.

12. Direction 32 (2) of the Immigration Directions (1996 Revision) provides:

- (2) If the Board has granted to a person who has been normally resident in the Islands for a total period of at least fifteen years permission under section 20 to remain permanently in the Islands, the Board may, subject to direction 30, grant that person permission under section 24 to engage in a gainful occupation.

13. Direction 30 of the Immigration Directions (1996 Revision) provides:

In the case of applications from person requiring to enter into or continue in gainful employment to maintain themselves and/or their dependants the Board shall have regard to the following criteria:-

- (a) the applicant's length of residence in the Islands; and save for exceptional circumstances the Board should only entertain an application where the applicant has resided in the Islands for a period of at least five years:

Provided that this requirement shall not apply to persons with close family connections with the Islands;

- (b) the criteria established by section 29(1), giving particular weight to section 29 (1) (f);
 - (c) the criteria established in direction 9;
 - (d) the connections that the applicant may have with the Islands; and;
 - (e) the applicant's standing in the community, and in particular to the contribution which the applicant has made, or may be capable of making, to the life of the community.
- (2) In regard to such persons the Board should also observe directions 22(1).
- (3) Save in those cases where the applicant also falls within the definition of a person of independent means, any permission to remain permanently within the Islands granted with an endorsement under section 24 (1) shall be conditioned to lapse automatically on the termination of the employment permitted by the endorsement, unless the Board considers for special reasons that it should not be so conditioned.
- (4) An endorsement, variation or entitlement under section 24 (1) shall normally be restricted to a particular occupation only (but not unnecessarily to a specified employer) or, in the case of a self-employed applicant, to a particular field of employment specified by him, although this may be varied by the Board to reflect changing circumstances should the Board, having had regard to all the circumstances of the case, consider it appropriate so to do.
- (5) An endorsement or variation of entitlement to a permanent resident who is self-employed shall specify the number of people, if any, the permanent resident may employ,
- (6) The Board should require the same fees to be paid on the grant of an endorsement or variation of an entitlement so as to permit engagement in gainful occupation as would have been required had the application and grant been for a work permit for the type of work concerned.

Illegality

14. The refusal of the grant of the Plaintiff's permanent residence on the grounds protection of local interest was not a reason that the Board could properly take into consideration under Direction 32(1) of the Immigration Directions (1996 Revision) when considering an application for a grant of permanent residence from an applicant who qualified

under the said Direction 32 (1) as a person who had been normally resident in the Islands for at least fifteen years in accordance with Section (presently Section 21) of the Immigration Law 1992.

15. Direction 32(1) of the Immigration Directions confers upon the Plaintiff a right to the grant or refusal of permanent residence subject only to the requirements of section 21 of the Law.
16. The legislative intent and objective behind Direction 32(1) was the protection of long term residents who had been residing in the Islands for more than fifteen years and to ensure that they were treated in a different category from other permanent residents who had resided in the Islands for lesser periods of time and with whom they had competed before the enactment of the Direction.
17. By virtue of the words in Direction 32(1) “in accordance with section 20” the Immigration Board was not entitled to consider any of the matters listed in Direction 30 in considering whether or not to grant permanent residence to the Plaintiff.
18. The words in Direction 32(1) “in accordance with section 20” must be construed so as to exclude any consideration of other Directions or other sections of the Law. Any other construction would defeat entirely the provisions of Directions 32(1) of the Directions.
19. It is clear from their letter dated 20th June 1997 that the Immigration Board took into account factors listed in Direction 30 of the Directions and in particular Section 29 (1) (d) of the Law. These matters could only have been taken into consideration by the Board if having granted permanent residence under Section 21 of the Law as read with Directive 32 (1) the Board had then moved on to consider whether or not the Applicant should have been also granted permission to engage in gainful employment.
20. It was therefore unlawful and in excess of the Board jurisdiction to take into consideration Direction 30 and section 29 (1) (d) of the Law when considering the application for a grant of permanent residence. and this constitutes an error of law on the face of the record.

Conclusion

21. In the premises, the Governor-in-Council misdirected himself in law in upholding the decision of the Immigration Board and his decision ought to be quashed. The Plaintiff will further contend that, inasmuch as the Governor-in-Council took account of the reasons given by the Immigration Board in their letter dated 20th June 1997 he took into account irrelevant considerations in coming to his decision.

Delay

22. Inasmuch as it may be considered by the Court that the Plaintiff has delayed in making this application for leave to apply for judicial review of the decision of the Immigration Board, the Plaintiff will contend that it was required first to exhaust its alternative remedy of appeal to the Governor-in-Council.

Oral hearing

23. The Plaintiff has retained Queen' Counsel to represent him in this matter and in consequence requests an oral application for leave in support of the foregoing grounds of appeal, and in view of the relief sought.

DATED this 3rd day of June 1998


Ian Boxall & Co.

THIS Application for leave to apply for Judicial Review was issued by Messrs, Ian Boxall & Co., Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is P.O. Box 1234, 3rd Floor CIBC Financial Building, George Town, Grand Cayman, B.W. I.