



COURT OF THE CAYMAN ISLANDS

CAUSE: G OF 2023

R OF: Section 23(2) of the Immigration (Transition) Act 2018

AND: IN THE MATTER OF: Section 24 of the Cayman Islands Constitution Order 2009

AND: IN THE MATTER OF SECTION 21 OF THE IMMIGRATION (TRANSITION) ACT (2022 REVISION)

AND: IN THE MATTER OF THE IMMIGRATION REGULATIONS (2019 REVISION) SCHEDULE 2

AND: IN THE MATTER OF ORDER 55 RULE 4(2) OF THE GRAND COURT RULES 1995 (REVISED)

BETWEEN: ELYSIA TARA MURRAY-FORBES APPELLANT

AND: IMMIGRATION APPEALS TRIBUNAL FIRST RESPONDENT

AND: DIRECTOR OF WORC SECOND RESPONDENT

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**NOTICE OF ORIGINATING MOTION**

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**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 Decisions of the Immigration Appeals Tribunal (**First Respondent**) and Director of WORC (**Second Respondent**) as relates to the refusal, of the grant of the right to be granted a Residency and Employment Rights Certificate, made by the Appellant; on the ground that the several decisions taken by the First and Second Respondents individually and collectively, in refusing this grant, are erroneous, unlawful, in breach of natural justice and at variance with the Immigration Regulations Schedule 2 (2019 Revision), and this is evidenced in the clear conduct in contravention, and or the failure to adequately take into account, the considerations provided for; under Factor 2 and 3 of the said Regulations.

**BACKGROUND**

The Appellant first made application to the Director of WORC ("the **First Respondent**") on February 19 2018. In a letter in response to that application, she was advised as follows: that..." **your application for the right to reside permanently in the Cayman Islands ...has been refused...** In considering an application...the criteria set out in the points system shall grant...to all applicants attaining one

**hundred and ten points...In this particular case, the total score attained is 100 points”...(The letter so advising is produced as Exhibit “EFM1”**

**In December of 2019, the Appellant made a fresh application for Permanent Residency, and by a letter dated May 6 2021, she was advised that she had only scored eighty five point five seven (85.57) points out of the requisite number of 110 points.(The letter so advising is produced as Exhibit “EFM2”**

The Appellant therefore contends, that the points award as per the letter dated May 6 2021, were not accurately, reasonably and fairly calculated, and in fact in relation to particular Factors taken into consideration, no points were awarded at all; as well as there were occasions where they were not adequately considered and points fairly awarded.

As well, it defied reason that, approximately a full year later, the Appellant's points award had inexplicably **declined**, and was reduced, by the significant number of; **fourteen point four three points (14.43)** in relation to her more recent application assessment. Examples of this decline was manifested in the areas of: Education-in the **19 February 2018 letter (for reference-“Letter 1”) =12pts**-in the **6 May 2021 letter (for reference “Letter2”) =0pts**; **cash and savings in Letter 1-15pts, in Letter 2- 3pts; in Letter 1 Salary and Income 11pts, in Letter 2- 7pts.** As well, the Appellant's Local, Investment in Property was C\$92,191.63 and the First Respondent failed to adequately consider this factor, when compared to the Regulation stipulated **“minimum of C\$50,000.00 ...and where investments exceeds C\$50,000.00 points will be awarded for the full value”... acting in breach of the Regulation.**

The Appellant is and was a Teacher, and a Jamaican national at the date of both applications, and was and remains; employed by the Ministry of Education. She had been Legally and Ordinarily Resident in the Cayman Islands at the time; since the year 2008 working as an Educator.

The Appellant is of the view at the time of being so advised, that not achieving the **“qualifying points”** was **erroneous in law and unreasonable**, and therefore by way of email and letters, dated March 2, 7 and 10 2023, and addressed to the First Respondent, the Appellant instructed her legal representatives to write to the First Respondent and make representation accordingly.

The Appellant was also subsequently requested to and provided **“fresh evidence”** in the form of an affidavit, which outlined evidence which impacted “ground Number 1” in her grounds of appeal filed against the decision of the Second Respondent, which outlined the list of her qualifications to date, which included a Masters Degree in Social Work, from the Jamaica Theological Seminary. This award represented, the latest in the series of the Appellant's qualifications, having previously listed them in her application for Permanent Residency, to include her Bachelors Degree in Social Work, Diploma in Teacher Training in Linguistics and Literature, Diploma in Technology and Counseling. (see page 3 of actual Application Form-**Exhibit “EFM 3”**)The First Respondent was invited to “reconsider” the Appellant's application, in light of its previous decision and that of the Second Respondent to make the award of **“0” points** to the Appellant; in this area of qualifications considerations.(Copy of this Affidavit is produced as :**Exhibit “EFM4”**)

By way a letter dated November 20 2023, the Appellant was advised, and it was confirmed by the First Respondent, that : **...We refer to the reconsideration request against the decision of the Tribunal dated 2<sup>nd</sup> March 2023 for the above-named...The Tribunal found that its original decision was not unreasonable, erroneous in law, a breach of natural justice nor at variance with the regulations and its decision as recorded in its letter dated 2<sup>nd</sup> March 2023 is upheld. Accordingly the request for reconsideration is denied”... (This letter is produced as “Exhibit “EFM3A”**

**GROUND OF APPEAL AGAINST REFUSAL OF PERMANENT RESIDENCE**

1. **THAT** the Respondent, failed to adequately consider or at all, the multiplicity of the skills and related qualifications possessed by the Appellant and therefore the award of "0" (0) points under **Factor 2b**, was wrong in law, principle and at variance with the Regulations, on account of the fact that, it was erroneously stated under this factor, that the Appellant had ..."declared a high school diploma on her application form as her highest level of education as it pertained to her occupation. However proof of same was not provided. Accordingly, the Appellant was awarded the following points under this category:- Points awarded-0"... when to the contrary, on page 3 of 16 of the Application Form dated November 7 2019, there were clearly listed, at **paragraphs 17 and 18 of this said form**, the Appellant's several tertiary education generated Degree and Diplomas, to include Teacher Training, Counselling, Social Work, Literature and Technology Training. (**Produced as "Exhibit "EFM3"**) It is respectfully submitted that these several qualifications were not adequately considered or at all, hence an award of "0" points; was wrong in law, principle and at variance with the Regulations, and a full points award should be made to the Appellant in all the circumstances, and by virtue of her cumulative qualifications, she most certainly should have been qualified, for an award of points under this Factor, by virtue and on account of, her specialized skills and related academic qualifications, rarely possessed by a single individual, and who has been engaged with work within the field of Education in these Islands, therefore the award of zero (0) points to the Appellant under this Factor; is therefore unreasonable, wrong in all the circumstances and at variance with the Regulations.
2. **THAT** the Appellant's points award under **Factor 3** was also not adequately considered or at all, on account of the fact that the Appellant provided a certified copy of the document representing the joint mortgage held by the Appellant and her spouse, with Fidelity Bank(Cayman) Limited, which document verified that the Appellant had up to the date of the publication of the said document paid up a total of CI\$92,191.63 with a remaining outstanding balance of CI\$213,227.00, representing an excess of over CI\$40,000.00 above the required "**minimum of CI\$50,000.00**" and at variance with the provision which states that ..."where investment exceeds CI\$50,000.00, points will be awarded for the full value, i.e. including the first CI\$50,000.00"... therefore the award of only 13.57 points in all the circumstances, was wrong in principle and at variance with the Regulations and should be set aside and full points awarded. (Copy of the Land Registry and Letter from Fidelity Bank are together produced as :**Exhibit "EFM5"**)
3. **THAT** the Appellant also respectfully submitted and petitioned the First Respondent, to consider the "**fresh evidence**" provided by the Appellant, in accordance with and under the provisions contained in **Section 22(5) of the Immigration (Transition) Act 2021** and to factor the same, into any additional points awards that it may deem appropriate i.e. the Appellant has to date and at the time, completed six hundred (600) hours of voluntary work with the Community Rehabilitation Services; and the Appellant had since November of 2021 completed the Masters Degree in Social Work; none of which were adequately or at all considered by the First Respondent and thus culminated in a "0" points award by the First Respondent which conduct was wrong in principle, and at variance with the Regulations Schedule 2 provisions.

4. **THAT** the Second Respondent unlawfully deducted points from the Appellant, on account of the fact that, the error manifesting a failure on the part of the Second Respondent, to adequately consider or at all, that there was no evidence before it, by which it could have rationally come to the conclusion that the Respondent came to, in awarding lesser points to the Appellant in circumstances where the Appellant had made gains generally but particularly in relation to Property Investment, Community services and Educational qualifications.
5. **THAT** the First Respondent appears to have fettered itself by suggesting that ...The Tribunal is asked to reconsider Factor 5-Community Involvement ...the Tribunal is not able to do so, as the Appellant received the maximum points allowed under the Regulations for this factor"... and appears to be seeking to "justify" not considering the more blatant disregard for the Appellant's qualifications, which were erroneously and unlawfully disregarded with the result that "0" points were awarded by the Second Respondent, and therefore unlawfully sanctioned and supported by the "wilful blindness" and disregard of the First Respondent, of an act and conduct which by any stretch of the imagination and by inescapable inference, was a flagrant demonstration of disregard by both the First and Second Respondents, of a legal entitlement and a legitimate expectation of the Appellant, as relates to the Appellant's qualifications and education, and this conduct was jointly and severally wrong in law, principle natural justice and in all the circumstances, and that the resultant adverse decision made to affect the Appellant should be set aside
6. **THAT** the Court in the Cayman Islands Court of Appeal's case of **Immigration Board and Governor in Council v Streeter and K Coast Development 1999 CILR**, which case traversed the statement which was made by Lord Green in the **Wednesbury** case, at p229 and 233-234... where he stated..."**It is true the discretion must be exercised reasonably...a person entrusted with a discretion must, so to speak direct himself properly...He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he is to consider. If he does not obey these rules he may truly be said, and often is said to be acting unreasonably ... The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely have refused to take into account or neglected to take into account matters which they ought to take into account...it may still be possible to say that although the local authority have kept within the four corners they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere"**... Furthermore, it was also said that..."**Where an Act of Parliament confers an administrative power [on a statutory body] there is a presumption that it will be exercised in a manner which is fair in all the circumstances...Fairness will very often require that a person who may be adversely affected...will have an opportunity to make representation...before...or after it is taken, with a view to procuring its modification..."** (see Lord Mustill in **ex-parte Doody [1994]1 AC 531**) . It is submitted that the decision of the First and Second Respondents in the given circumstances of this case, to refuse the Appellant's application, by erroneously failing to award and as well to deduct points, falls squarely within the realms of the foregoing statement of Lord Greene; thus rendering the decision by the First and Second Respondents, as being "unreasonable" and

“irrational” in all the circumstances. The obligation to act “reasonable” is also highlighted in the case of **Mohanty v Medical Board** where it was said that the Respondent had given...“**manifestly inappropriate weight**” to a feature of their deliberations, to make it Wednesbury “unreasonable”; as is respectfully submitted to be conduct of the Respondents, in the circumstances of this case; but rather, it is the case here where “appropriate weight” has been withheld and or ignored, by both Respondents, which makes this decision by the First Respondent; erroneous, at variance with the Regulations and wrong in principle generally.

7. **THAT** the conduct of the First Respondent, to sanction and support the unlawful decision of the Second Respondent, by accordingly refusing the Appellant’s Appeal against the refusal, of the grant of Permanent Residency, and on the basis that they did so, was erroneous in law, clearly unreasonable, at variance with the Regulations, as well as, being done in disregard of the provisions contained in **Section 24 of the Cayman Islands Constitution Order 2009**, and by extension; the rules of natural justice and in all the circumstances; to the detriment of the Appellant. In the precedent local case of **Hutchinson-Green and Alisha Myriah Racz (2015)(2) CILR 75 (Grand Court)**, the Chief Justice referring to the duty of the court, opined that there would be times where the court in some cases would be more stringent in scrutinizing the decisions made. He said...” **It is a duty that will arise depending on the context of the case, so as to place the focus more closely upon the details of the decision making of the authority whose decision is brought into question. In such cases, which will more readily arise in the human rights context, the court should not necessarily be looking for an extreme degree of unreasonableness, capriciousness or absurdity on the part of the decision maker before intervening, something less will do**” ...
8. **THAT** the Respondent 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** and has in fact been, contributing in remarkable ways, 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 engaged in the education of young Caymanians, therefore the First Respondent erred in applying this provision to the Appellant, and the tacit support given to the said decision by the First Respondent, by its own conduct of ultimately denying the appeal of the Appellant, when it could not reasonably be said, that the mischief and spirit of the law, was designed to have such an effect and to deny someone such as the Appellant; the right to reside and teach

young Caymanians; with the ultimate objective being that of "nation building. The Appellant also held a legitimate expectation, that on account of the fact that the Letter of Refusal dated February 19 2018, granted her Points award numbering "100 points", then her subsequent re-application and change of circumstances, should not have resulted in an award of eightyfive point five seven (85.57) points; some fifteen (15) points less than the earlier award and therefore unreasonable in all the circumstances and definitely at variance with the Regulations.

**AND THE APPELLANT PRAYS** that **AS SUCH** the Decision imposed by the First and Second Respondents be set aside, on account of that which has transpired, particularly in relation to the Appellant's Educational Qualifications, Investment , and community services generally, and that the decision of the First and Second Respondents, purporting to refuse to grant the Appellant the right of Permanent Residency, should be set aside as being wrong in principle, law, at variance with the Regulations, contrary to the established policies; and in all the circumstances unreasonable; and a Declaration be made to order a rehearing of the Appellant's appeal.

  
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(Attorney at Law (for the Appellant))

Dated the *9* day of December 2023

**TO:** The Clerk of the Court  
**AND TO:** The Director of Border Control  
**AND TO:** The Attorney General

This **Notice of Motion** was filed by Brady Attorneys at Law, Second Floor, Anderson Square George Town, Grand Cayman, P O Box 11740 APO, KY1-1009, Cayman Islands, British West Indies.