IN THE GRAND COURT OF THE CAYMAN ISLANDS **CAUSE NO: OF 2024**

IN THE MATTER OF SECTION 37 OF THE IMMIGRATION (TRANSITION) ACT (2022 REVISION)

IN THE MATTER OF ORDER 55 OF THE GRAND COURT RULES

:R OF SECTION 23 OF THE BILL OF RIGHTS

IATTER OF AN APPLICATION FOR A RESIDENCY AND EMPLOYMENT RIGHTS CERTIFICATE
) SECTION 37 OF THE IMMIGRATION (TRANSITION) ACT (2022 REVISION).

GRAND COURT CIVIL DIVISION CAYMAN ISLANDS

SIDIAN DACIA BROWN

Appellant

-v-

IMMIGRATION APPEALS TRIBUNAL

1st Respondent

AND

CAYMAN STATUS & PERMANENT RESIDENCY BOARD **2nd Respondent**

NOTICE OF
ORIGINATING MOTION

TAKE NOTICE that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on the _____ day of _____ 2024 at _____ a.m./p.m. or as soon thereafter as counsel can be heard, by counsel on behalf of the Appellant for an order in the following terms:

i. The decision of the 1st Respondent dated 6 February 2024 was unreasonable and not in accordance with the Law. Therefore, the matter should be remitted to the 1st Respondent to be reconsidered and decided according to the Law; and / or

ii. The decision of the 1st Respondent dated 6 February 2024 amounts to a breach of the Appellant's Section 9 rights as protected by the Bill of Rights.

iii. The Judgment of the 1st Respondent that no grounds had been made out, thus the decision by the 2nd Respondent was not unreasonable or erroneous is an error of Law.

iv. The erred Judgment by the 2nd Respondent implying that the application was incomplete and not in accordance with the Law.

And for an order that the costs, of and incidental, to this Application be paid by the Respondents.

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

1. The Appellant is married to Herman Fernand Harris who is a Caymanian and the marriage remains intact.

2. At no time was the Appellant informed that the Cayman Status & Permanent Residency Board (the "Board"), that they had not received the information submitted on the 21 February 2023 by her then Attorney.

3. Despite the alleged failure to provide the required information, the following was and is contended as correct:

    i. The Appellant intended to and did provide the information requested, as shown by the fact it is accepted that a letter dated 21 February 2023 was received by the Department of WORC.

ii. The Appellant acquired a stamped submission letter confirming the Board received the same.

iii. It was always the Appellants intention to provide the information so she could obtain and RERC continue to work and live in the Cayman Islands.

4. On the 6 October 2021, the Appellant applied for Permanent Residence and a Residency and Employment Rights Certificate ("RERC") following which updates were provided for the application. The Board subsequently sent a deferral letter to the Appellant on 14 February 2023, asking that the Applicant provide additional information.

5. On the 21 February 2023, it is averred that an Attorney on behalf of the Appellant, submitted the following information in response:

i. Pay slips for the Appellant and her spouse;
ii. Employment letters for the Appellant and her spouse;
iii. Detailed bank statements;
iv. Completed income and expense statement;
v. Copy of lease agreement;
vi. Copy of CUC bill;
vii. Copy of Water authority bill;
viii. Copy of Flow bill;
ix. Copies of receipts for school payments for child; and
x. Letter from Clide Coley in support of his weekly contribution for the Appellant's child.

6. On 17 July 2023, the 2nd Respondent refused the Appellant's application for RERC, stating that the application was incomplete -

Dear Sir/Madam,

BROWN, SIDIAN DACIA
Residency & Employment Rights (Spouse Of Caymanian)
Section 38 of the Immigration (Transition) Act (2021 Revision)

I refer to your application in respect to the above and hereby advise that your request was considered at a recent meeting of the Caymanian Status and Permanent Residency Board and was not approved.

Reason(s) for Refusal are

- Residency and Employment Rights Certificate as a Spouse of a Caymanian is Refused as the application is incomplete.
- he Board noted that the applicant did not comply with the request for additional information.
- Please note, all references to the Immigration Law (2015 Revision), Immigration (Transition) Law 2018 and/or Immigration (Transition) Act (2021 Revision), and the varying sections are now replaced by the Immigration (Transition) Act (2022 Revision), and the varying sections.

7. On 19 July 2023, the Appellant appealed the decision to reject her application to the 1st Respondent and in the notice of appeal it was stated:

We submit that the Appellant did provide the documents as requested in the first deferral letter and the second deferral letter.

We submit that this decision is erroneous and unreasonable.

8. In the 1st Respondent's Judgment dated 6 February 2024, the rationale for their decision was recorded as being:

"i. The Appellant's Residence and Employment Rights Certificate as a spouse of Caymanian was refused as the application is incomplete;

ii. The Board noted that the applicant did not comply with the request for additional information;

iii. The Board in its letter dated 8th March 2022 to the Appellant requested "(1) Dependent Information Form - ...along with the Monthly Income and Expense Sheet to be provided by 29th March 2022;

iv. On the 14th July 2022 the Board deferred the matter to arrange for the Appellant and her spouse to appear before it;

v. The matter returned to the Board on 9th February 2023, as the Appellant and her spouse were scheduled to make an appearance on that date and subsequent to the meeting, the Board requested that the Appellant provide updated pay slips, updated employment

letters, detailed bank statements for both the applicant and spouse, with a Monthly Income and Expense report. The Board's letter dated 14th February 2023 indicated that responses must be provided within fifteen days hereof;

vi. *On 6th July 2023, the matter was back before the Board and the application was refused as the Appellant failed to provide the information that was requested, by way of letter dated 14th Febr*uary 2023 (subsequent to the interview with the Board). As such, the application was refused;

vii. *The Tribunal found no evidence of updated documentation dated between 10th February 2023 and 1st March 2023 as requested by the Board to the Appellant, other then the Appellant's attorney's cover letter dated 21st February 2023.*

The Tribunal determined that the no grounds had been made out, the decision of the Board to refuse the grant of permanent residence certificate was no unreasonable, or erroneous.

Accordingly, the appeal is unanimously dismissed."

Appellant's position

9. The Appellant's position is as follows:

i. She was informed by her Attorney that the letter of 21 February 2023 and it's attachments were provided to the Department of WORC in response to the letter of 14 February 2023.

ii. She was provided with a letter of 21 February 2023, which shows the letter was received by the Department of WORC on 21 February 2023.

iii. The evidence that she has seen is indicative of the letter of 21 February 2023, being provided to the Department of WORC.

iv. In the event that **only** the letter of 21 February 2023, was provided to the Department of WORC, the Board should have realised a mistake had happened and deferred their decision, requesting the information contained within the letter.

10. The Appellant would therefore say that the following factual scenarios are possible:

i. The Appellant's attorney provided the letter of 21 February 2023 and it's attachments to WORC and the attachments were mislaid by WORC or not provided to the Board. If so, the Appellant is not responsible for this.

ii. The Appellant's attorney provided **only** the letter of 21 February 2023 to WORC and did not include the attachments. If so, the Appellant is not responsible for this default.

11. The Appellant would aver that her and her husband and the innocent parties in a situation which was outside of their control.

Error of Law by the 2nd Respondent

12. When assessing whether or not an individual has failed to comply with the request for additional information, it is averred that the 2nd Respondent should have considered the following.

i. Is there evidence which suggests that the evidence has been provided?

ii. If yes, does the 2nd Respondent have that evidence.

iii. If not the 2nd Respondent should ascertain the whereabouts of that evidence and if necessary defer the application.

13. It is the Appellant's case that it is not clear whether the 2nd Respondent was ever aware of the letter stamped received by WORC on 21 February 2023. It is noticeable that:

i. The letter was not referenced in the "Reasons for the Board's decision".

ii. There is no explanation as to why it is that if the letter of 21 February 2023 was received (and considered) why the matter was not deferred for the evidence contained within it to be produced.

14. While it is accepted that there is an oblique reference to a letter in the Appeal Statement where it is referred to as "Request for updated Information and Response" it is not clear if this relates to the letter of 21 February 2023, or an earlier request and response.

15. If it is the case that the 2nd Respondent was not in receipt of the letter of 21 February 2023 it is contended that their decision is so unreasonable that it amounts to an error of law, as there was a breakdown in communication between the 2nd Respondent and WORC.

16. If it is the case that the Board were in receipt of the letter of 21 February 2023 and the attachments it is contended that they have acted so unreasonably in not considering this information that the decision amounts to an error of Law.

17. If it is the case that the 2nd Respondent were only in receipt of the letter of 21 February 2023 and not the attachments it is contended that the 2nd Respondent acted so unreasonably in not deferring the application for the information requested that their decision amounts to an error of Law.

18. If it was the case that the 2nd Respondent were faced with the letter of 21 February 2023, without any attachments the obviously explanation for this would have been either an error by the Department or an error by the instructed Attorney, neither of which the Appellant should have been blamed for. It is therefore averred that if this scenario is correct, the 2nd Respondent acted unreasonably in rejecting the application.

Error of Law by the 1st Respondent

19. On the 19 July 2023, the Appellant submitted an appeal to the 1st Respondent on the basis that the decision of the 2nd Respondent was unreasonable.

20. On 26 September 2023, the Appellant's Attorney submitted Grounds of Appeal setting out that:

i. The evidence requested in the letter of 14 February 2024 was provided.
ii. The decision to reject the RERC was erroneous and unreasonable.
iii. Prima facie, sufficient evidence was before the Tribunal for them to accept that the evidence requested on 14 February 2023 was provided.
iv. The decision not to grant the RERC amounts to a breach of Section 9 of the Bill of Rights.

21. On the 6 February 2024, the 1st Respondent, having reviewed the Applicant's appeal of the 2nd Respondent's decision, declared that no grounds had been made out, thus the decision to refuse the RERC was not unreasonable or erroneous. It does not appear that the 1st Respondent:

i. Received an explanation from the 2nd Respondent or WORC as to whether they received the letter of 21 February 2023.
ii. Sought an explanation from the 2nd Respondent as to whether they were aware of the letter of 21 February 2023 and if so why they did not defer the application.

22. It is respectfully contended that the 1st Respondent erred in Law in that it they should have concluded:

i. There was sufficient evidence produced to show that the letter of 21 February 2023 and it's attachments were provided to WORC and therefore the failure to provide this to the 2nd Respondent was not the fault of the Appellant and therefore the decision was unreasonable; or
ii. There was sufficient evidence to show that **only** the letter of 21 February 2023 was provided to the Board and this was not the fault of the Appellant and therefore the decision not to defer the application was unreasonable.

23. It is therefore averred that the 1st Respondent's decision is unreasonable and should be quashed and the matter remitted back to the 1st Respondent for a further reconsideration.

Breach of Natural Justice

24. It is further averred that because of the truncated nature of the decision above, the decision is not sufficient and amounts to an error of law / breach of natural justice.

25. In a case that the 1st Respondent is all too familiar with, *National Roads Authority v Bodden* [2014] 2 CILR it was held that:

The RAC had not given sufficient reasons for its decision. The requirements of the 2009 Constitution, Schedule 2, s.19— as well as the right to appeal the RAC' s decision on a question of law under the Roads Law, Second Schedule, s.8(1)(b)— required the RAC to meet certain standards when giving its decision. It therefore had to give the reasons for its decision in sufficient detail that any person reading them would have no substantial doubt as to whether it had made an error in law. It was not necessary, however, for the RAC to give reasons for every material consideration, provided that it referred to the main issues in dispute. As its written reasons had been limited to a summary of its evidence and conclusions, its reasons could not be regarded as sufficient and its decision would be set aside and remitted for a fresh hearing.

26. Henderson J, at paragraph 25 -27 of the *NRA* Judgment stated:

25 The constitutional guarantee and the right of appeal on a question of law mean that a decision of the RAC must meet certain minimal standards. It is not enough simply to state a result on the principle issues; the parties are entitled to know the reasoning and the primary findings of fact which led the RAC to its conclusion. The obligation has been described in this fashion by the House of Lords in South Bucks. D.C. v. Porter (No. 2) (3) ([2004] 1 W.L.R. 1953, at para. 35):

"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. . . A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

26 Regrettably, the abbreviated nature of the decision renders impossible any review by me of the implicit finding that the requisite elements of a prescriptive easement had been established. The decision presents no legal analysis at all— it simply states a conclusion. Moreover, it contains no findings of fact which would enable this court to determine that the RAC' s conclusion about a prescriptive easement was within the realm of reasonableness.

27 The failure of a tribunal to provide adequate reasons for a decision is itself a question of law. Although the NRA has not set out this ground in its notice of appeal, I am satisfied that consideration of the adequacy of the reasons on the appeal does not take the claimants by surprise. They have no doubt anticipated much of what has been said during argument and have not suggested that they are prejudiced by the attack upon the adequacy of the reasons.

27. The 2nd Respondent's reasons are wholly deficient in that they do not make clear:

i. Whether they received the letter of 21 February 2023.
ii. And if they did receive the aforementioned letter, why it is that they then refused to defer the application.

28. It is contended that the 1st Respondent's decision is defective in that they fail to address:

i. What steps the Board should have taken if they were presented with only the letter of 21 February 2023; and
ii. Why it was the case that the Board's failure to defer the application for the evidence listed in the letter of 21 February 2023 to be provided was not unreasonable.

29. As the 2nd Respondent did none of the above, it is averred that the decision is defective as there must be a substantial doubt as to whether or not the Board:

i. Directed itself correctly.
ii. Applied the burden and standard of proof correctly.
iv. Correctly identified the issues.

30. Because the decision was so short and unclear, especially when one has regard to the decision of 6 February 2024, it is contended that the Appellant has been substantially prejudiced due to the limited nature of the decision. The Appellant cannot make submissions to the burden or standard of proof, whether the Board erred in law and whether the Board misdirected itself.

31. It is therefore contended that the decision should be quashed and a *de novo* hearing ordered.

Conclusion

32. It is therefore contended that the 1st and 2nd Respondent erred in Law and acted unreasonably. Accordingly, the decision of both Respondents should be set aside, and the orders be made so that the Appellant's application can be reheard in accordance with the Law.

DATED: 5 March 2024

HSM CHAMBERS

HSM CHAMBERS

TO: The Clerk of the Court

And To: The Chairman
Immigration Appeals Tribunal
Government Administration Building
Elgin Ave,
George Town
Grand Cayman

And to: Attorney General of the Cayman Islands.