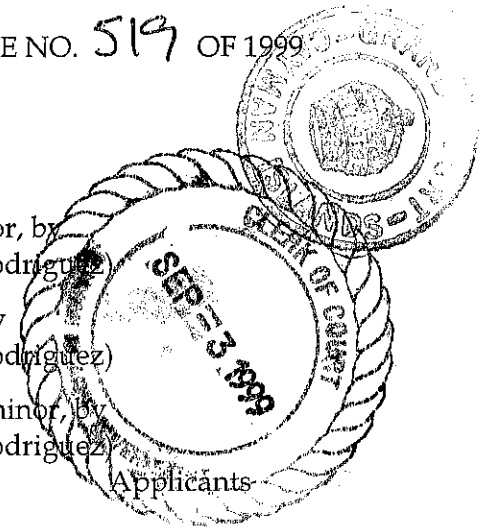


IN THE GRAND COURT OF THE CAYMAN ISLANDS

LEGAL AID

CAUSE NO. 519 OF 1999

- BETWEEN:
- (1) JOSE RAMON RODRIGUEZ
 - (2) DAWN MARIE RODRIGUEZ
 - (3) LANCE VANDAM RODRIGUEZ, (a minor, by his next friend and mother, Dawn Marie Rodriguez)
 - (4) RAMON JOSE RODRIGUEZ, (a minor, by his next friend and mother, Dawn Marie Rodriguez)
 - (5) DIEGO MARADONA RODRIGUEZ, (a minor, by his next friend and mother, Dawn Marie Rodriguez)



Applicants

- AND:
- (1) THE CHAIRMAN OF THE IMMIGRATION BOARD
 - (2) THE GOVERNOR IN COUNCIL OF THE CAYMAN ISLANDS

Respondents

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 First Applicant	Jose Ramon Rodriguez ("Mr. Rodriguez") c/o P.O. Box 68, George Town, Grand Cayman unemployed
Name, address and description of Second Applicant	Dawn Marie Rodriguez ("Mrs. Rodriguez") c/o P.O. Box 68, George Town, Grand Cayman data input clerk
Name, address and description of Third Applicant	Lance Vandam Rodriguez, aged 4 years, c/o P.O. Box 68, George Town, Grand Cayman, the eldest child of the marriage of Mr. and Mrs. Rodriguez
Name, address and description of Fourth Applicant	Ramon Jose Rodriguez, aged 3 years, c/o P.O. Box 68, George Town, Grand Cayman, the middle child of the marriage of Mr. and Mrs. Rodriguez
Name, address and description of Fifth Applicant	Diego Maradona Rodriguez, aged 1 year, c/o P.O. Box 68, George Town, Grand Cayman, the youngest child of the marriage of Mr. and Mrs. Rodriguez

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

(i) A decision of the Immigration Board communicated orally to Mrs. Rodriguez on or about 22nd June 1998, and contained in a letter dated 13th July 1998 from the Secretary of the Immigration Board to Mr. Rodriguez, whereby Mr. Rodriguez was informed that his application for a work permit as a construction worker was refused under the provisions of section 31 (1) of the Immigration Law (1997 Revision) as read with section 30 (1) (a) of the same law in the light of a criminal conviction of Mr. Rodriguez;

(ii) A decision of the Governor in Council contained in a letter dated 3rd June 1999, whereby Mr. Rodriguez's then attorneys were advised that an appeal against the said decision of the Immigration Board was not allowed;

(iii) A decision of the Chief Immigration Officer, communicated orally to Mr. and/or Mrs. Rodriguez on or about 22nd June 1998, whereby Mr. Rodriguez was required to leave the Cayman Islands forthwith. Following representations by Mrs. Rodriguez to the Chief Immigration Officer, Mr. Rodriguez was permitted to remain on the Island until 27th June 1998. We are advised that neither Mr. nor Mrs. Rodriguez has ever received written notification of this decision.

Relief Sought

1. A declaration that the said decisions of the Immigration Board, the Governor in Council, and the Chief Immigration Officer were unlawful and/or unreasonable.
2. An order quashing the said decisions.
3. An order remitting Mr. Rodriguez's application for a work permit to the Immigration Board for further consideration.
4. An order directing the Chief Immigration Officer to permit Mr. Rodriguez to re-enter the Cayman Islands.
5. Such further and other relief as may be just.
6. Costs.

Name and address of applicants' attorneys, or, if no attorneys acting, the address for service of the applicant	Quin & Hampson, Attorneys-at-Law, Third Floor, Harbour Centre, P.O. Box 1348, George Town, Grand Cayman
Signed <u>Quin & Hampson</u> QUIN & HAMPSON Dated <i>2nd</i> September 1999	

GROUNDNS ON WHICH RELIEF IS SOUGHT

Background

- 1.1 The Second Applicant, Mrs. Rodriguez, is a Caymanian woman. The First Applicant, Mr. Rodriguez, is her husband and a citizen of the Dominican Republic. They married on 28th August 1993. Mr. Rodriguez had at that date been living in Cayman for several years, where he worked as a construction worker. The Third through Fifth Applicants are the 3 children of the marriage, who are aged 4 years, 3 years, and 1 year respectively.
- 1.2 In 1995, in the context of a matrimonial dispute, an incident took place between Mr. Rodriguez and his wife which she reported to the police. He was charged in relation to the incident with threatening violence (3723/95) and assault causing actual bodily harm (3724/95). Mr. Rodriguez pleaded guilty in the Summary Court to the charge of assault and was fined \$500.00. The charge of threatening violence was adjourned *sine die*. Mr. and Mrs. Rodriguez were reconciled and put the incident behind them. Indeed, Mrs. Rodriguez tried to withdraw her complaint but was told by the police that this was not possible.
- 1.3. Subsequent to that incident Mr. Rodriguez was charged with causing actual bodily harm in relation to a fight with another man (229/96). This was in relation to a non-domestic incident which took place on 6th October 1995. He pleaded guilty in the Summary Court and was sentenced to 6 months imprisonment, suspended for 2 years, and fined CI\$800.00. Another charge of causing actual bodily harm arising out of the same incident (228/96) was left to lie on the file.
- 1.4 Mr. Rodriguez had made an application for a work permit on a previous occasion subsequent to these convictions. This was refused in or about November 1996.
- 1.5 In June 1998, at the time when Mr. Rodriguez was required to leave the jurisdiction, there were a number of road traffic matters outstanding against him. He had pleaded not guilty to charges of failing to provide a breath test (130/95) and speeding (131/95) which arose from an incident on 24th December 1994, and not guilty to a charge of refusing to provide a breath test (923/96) which arose from an incident on 4th February 1996. He had pleaded guilty to charges of using a vehicle with expired registration (921/96) and using a vehicle without a certificate of roadworthiness (922/96) which arose from the same incident and for which he had yet to be sentenced. He failed to appear at court on 21st May 1998 and 16th June 1998, and warrants were issued not backed for bail.
- 1.6 The dates and circumstances of the decisions which it is sought to have judicially reviewed are set out above. The application for a work permit was supported by 3 written references. After being notified that Mr. Rodriguez was required to leave the Cayman Islands, Mr. and Mrs. Rodriguez attended a meeting with the Chief Immigration Officer. He advised them of the following:
 - (i) That the work permit application had been refused because of Mr. Rodriguez's conviction for assaulting his wife,

- (ii) That Mr. Rodriguez's other convictions had not been a material consideration, and
- (iii) That the reason Mr. Rodriguez was required to leave the Island was that he was unable to support himself.

1.7 Mr. Rodriguez is now living in the Dominican Republic where he is presently unemployed. It is not practicable for his family to join him there because the depressed state of the economy would make it difficult if not impossible for Mrs. Rodriguez, who has no connection with that country other than by marriage, to find a job there. Mrs. Rodriguez is living in Cayman with the 3 children of the marriage. She has been employed by Barclays Bank since May 1990, and earns an annual salary of CI\$21,600.00, or CI\$1,800.00 per month. She and her children are experiencing financial hardship.

1.8 The effect of the decision being appealed against is to separate Mr. Rodriguez from his wife and children. They are therefore deprived of a family life with him and, in the circumstances of this case, the opportunity to receive his financial support.

Grounds

2.1 The said decisions of the Immigration Board and the Governor in Council were unlawful and/or unreasonable in that the decision makers manifestly failed to take particularly into account, as they were required to do under section 30 (1) of the Immigration Law (1997 Revision)("the Law"), the following:

- (1) The hardship that may be caused to the spouse and dependents of the worker (see section 30 (1) (h) of the Law). The hardship consists of:
 - (i) Prejudice to their family life with Mr. Rodriguez. If Mr. Rodriguez is unable to work then, even without the decision of the Chief Immigration Officer requiring him to leave the Island, it is difficult to see how he could afford to remain.
 - (ii) Depriving them of the opportunity to receive badly needed financial support from Mr. Rodriguez.
- (2) Generally, the requirements of the community as a whole, and such other matters as may arise from the application (see section 30 (1) (k) of the Law). The community has an interest in promoting stable nuclear families where children have the opportunity to be raised by both parents, particularly where one parent is Caymanian:
 - (i) Such families are intrinsically desirable. The traditional Christian values in which Cayman society is rooted accord particular respect to families and the needs of children.
 - (ii) Such families are of practicable benefit to the community in that they tend to promote a stable, crime free society.

- (iii) Respect for such families is in keeping with Cayman's obligations under various international human rights instruments, for example Article 23 of the International Covenant on Civil and Political Rights, and Article 8 of the European Convention on Human Rights.

2.2 The said decision of the Chief Immigration Officer was unlawful and/or unreasonable in that it was tainted by the unlawfulness and/or unreasonableness of the decision of the Immigration Board, upheld by the Governor in Council, to refuse Mr. Rodriguez's application for a work permit. If the decision to refuse that application falls, so too must the decision of the Chief Immigration Officer.

Note:

If this Application for Leave is allowed, the Applicants reserve the right to supplement or amend the above grounds on the subsequent Application for Judicial Review in the light of the discovery therein to be provided by the Respondents.

Filed by Quin & Hampson, Attorneys-at-Law for the Applicants herein whose address for service is Third Floor, Harbour Centre, P.O. Box 1348, George Town, Grand Cayman