

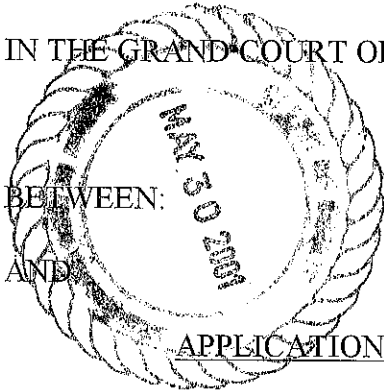
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Application for Leave to Apply for Judicial Review (O.53, r.3)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Legal Aid
CAUSE NO: 327 OF 2001

BETWEEN: Ms. ANA LUISA WARREN APPLICANT
AND THE IMMIGRATION BOARD RESEPPONENT



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.	Ana Luisa Warren of P.O. Box 393 GT, Grand Cayman, Cayman Islands, BWI.
Judgment, order, decision or other proceeding in respect of which relief is sought	Direction of the Immigration Board of 28 3 2000 that grant of status on 5. 2. 1992 was ultra vires.
<p>Relief Sought</p> <p>Leave to apply to the Grand Court for a Declaration by way of judicial review and for an order of certiorari quashing the decision to grant the Applicant Caymanian Status under s. 18 (5) and mandamus remitting the matter back to the tribunal for it to consider her application pursuant to s. 18 (4).</p>	
Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	Clyde Allen Brooks & Brooks Barristers & Attorneys-At-Law PO Box 1355, Grand Cayman, British West Indies
Signed	<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> _____ </div> <div style="text-align: right;"> Dated 30.5.2001. </div> </div>

GROUND ON WHICH RELIEF IS SOUGHT

- a. That the Caymanian Protection Law, 1984 (Law 24 of 1984) (the "Act") section 18 (4) provides that "Any person who becomes a British Dependent Territories Citizen by reason of a grant by the Governor of a certificate of naturalization or registration

issued under the British Nationality Act , 1981, or any act amending or replacing that Act may apply to the Board for the grant of Caymanian status.”

- b. By virtue of section 18 (5) of the Act “Any eligible person – who is the spouse of a person who possesses Caymanian status.....may apply to the Board for the grant of Caymanian status.”
- c. The applicant had resided in the Cayman Islands since 11 September 1980. She was married on 4 July 1981 to Mr. D. E. Warren who arrived in the Cayman Islands from Honduras in 2 May 1962. Mr. Warren has the right of residency in the Cayman Islands. Mr. Warren was granted a certificate of naturalization as a British Dependent Territories citizen (“BDTC”). The applicant was granted permanent residency in 1989.
- d. On 8 October 1990 the applicant was granted a certificate of naturalization as a BDTC.
- e. On 14 December 1990 the applicant applied under s. 18 of the Act for the Grant of Caymanian status and submitted the relevant documents, including the certificate of naturalization, to support her application. The applicant’s application was made pursuant to s. 18(4) of the Act
- f. The Board considered it could not grant the applicant Caymanian status under either s. 18(1) or (4) because it thought, albeit erroneously, that The Caymanian Protection Law, 1984, The Caymanian Protection (Moratorium on the Granting of Caymanian Status) Direction, 1990 (the “Direction”) dated 2 October 1990 applied to both of those sections. In fact the Direction only applied and still only applies to s. 18 (1) of the Act, or put another way, there is no moratorium in place in relation to s. 18(4) of the Act.
- g. There was no evidence before the Board that the applicant was married to a Caymanian or that her application for Caymanian status was based on s. 18 (5) of the Act.
- h. On 5 February 1992 the applicant was granted Caymanian status. On a careful review of the certificate it would appear that the grant was made pursuant to s. 18 (5) of the Act. The significance of the reference to s. 18 (5) on the certificate was not apparent or known to the applicant.
- i. On 5 March 1992 the applicant was notified in writing by the Offices of the Caymanian Protection Board of her “....preferment of Caymanian status, which was granted to you recently by the Caymanian Protection Board.”
- j. On 31 July 1998 the Grand Court granted the applicant a decree of dissolution of her marriage. A certificate of dissolution of her marriage was duly signed by the Clerk of the Court on 1 September 1998.
- k. Based on the advice of an Immigration Officer the applicant made an application dated 28 October 1998 to continue her Caymanian status under The Immigration Law (1997 R), s. 19(1)(b)(ii)(C).
- l. By a letter dated 28 March 2000 the Immigration Board directed that the grant of Caymanian status to the applicant on 5 February 1992 was ultra vires since it had been determined that the (*applicant’s*) spouse (from whom such claim was made) did not in fact and still does not possess Caymanian status and is therefore void ab initio (sic)”. By the same letter the applicant was informed that she was not a person possessing Caymanian status and that she should have her immigration status in the

Islands regularized. In short, that would involve applying for a work permit. It is not immediately clear if there has been a revocation of the applicant's Caymanian status, but she was not given any prior notice of any such revocation, no hearing took place and the applicant was not permitted to make any representations.

- m. As a result of an exchange of correspondence between the applicant's attorney and the Board, it is clear that the Board, when determining whether to grant Caymanian status to the applicant, considered facts that were not relevant and failed to consider matters which it was bound to consider. It acted unreasonably and reached a decision that was wrong.
- n. If the Board was unsure of the status of the applicant's spouse at the time they considered her application for Caymanian status, it should have invited the applicant to address it either in writing or attend before the Board and answer questions as to the status of her spouse or the basis of her application. Not to do so, but to make a decision which it now accepts to be wrong, has caused the applicant to suffer loss and damage. The Board failed to permit the applicant an opportunity to make representations before it, thus went on to render a decision that was wrong. The applicant considers that there has been a breach of natural justice. Further, she was not permitted an opportunity to make representations which could have addressed and prevented the error made by the Board.
- o. It is to be noted that at no time when the Board was considering whether to grant the applicant status did she mislead, make false statements or conceal any facts from the Board. Any and all suggestions made otherwise are denied. The error made was solely of the making of the Board.
- p. It is clear from the finding of the Board on 5 February 1992 that it was the intention of the Board to grant the applicant Caymanian status. The Board could have granted the applicant Caymanian status pursuant to s. 18(4) of the Act but failed to do so.
- q. The applicant has been informed that the Board will not now consider that it can grant her Caymanian status under s. 18 (4) of the Act because of the Direction referred to above. Since it is clear on the face of the Direction that it only applies to s. 18(1) of the Act, the failure of the Board to reconsider an application *de novo* under s. 18(4) of the Act is irrational.
- r. Alternatively, the grant of Caymanian status is *intra vires* insofar as the Board had power to make such a grant. However, the Board appears to have fallen into error when deciding the basis upon which such grant could be made in the applicant's particular case. If it is correct that there was not and still is not a moratorium in place in relation to s. 18(4) of the Act, and that was the basis upon which the application was made, the Board can revoke its earlier decision and could grant the applicant Caymanian status by way of a new hearing or an amendment of its earlier decision. Since it was the intention of the Board to grant the applicant Caymanian status, the Board could review the matter and simply amend the basis upon which Caymanian status was granted, that is it could grant it pursuant to s. 18(4) and not s. 18(5).
- s. Further, and more importantly, the Immigration Law (2000 Revision), s. 20 provides for situations where Caymanian status can be lost. The applicant is unable to find any provision under the Immigration Law (2000 Revision) that provides for the loss of Caymanian status in circumstances similar to hers.

- t. That s.20 (4) of the Immigration Law provides for the loss of Caymanian status granted, *inter alia*, pursuant to s. 18 of the Act, which clearly states that it can only be taken away by way of an order of the Board. No order has been made and if any such order has been made the applicant has not been informed of its specific details, such as when it was made and its terms or given notice of her right of appeal against such a decision to the Governor. A failure to notify the applicant of any such order or here notice of a right of appeal is of fundamental importance since such notice would be mandatory and would render any order or notice a nullity.
- u. The applicant is of the view that, notwithstanding the opinion of the legal department that the grant of Caymanian status under s. 18 (5) of the Act is void *ab initio*, it must be formally taken from her pursuant to s. 20 of the Immigration Law by way of an order which to date has not occurred.
- v. The applicant was permitted to return to work without a work permit between August and November 2000. The applicant was also permitted to vote during the November 2000 elections and still holds a valid Caymanian passport. However, at the end of November 2000, the applicant was informed by the Immigration Task Force that she was not permitted to work otherwise she would be arrested.
- w. The applicant has sought to resolve this matter without recourse to legal proceedings since she simply does not have the funds to pay for such legal action. Through the auspices of the Governor's Office, there was an exchange of correspondence which resulted in a letter being sent to the applicant on **30 March 2001** wherein for the first time it appears that it is conceded that there is no moratorium in place for s.18 (4) of the Act. Further, that letter invites the applicant to place this matter before the court for resolution.
- x. It is trite law that when exercising its powers, the Board had a duty to act fairly. By that it is meant that the Board could only properly act if in doing so it observes the rules of natural justice. Hence, if the basis of the applicant's application was unclear, the applicant should have been provided with an opportunity to appear before the Board and address it on the basis of her application. The applicant has been informed that she misled the Board, which was why she was granted Caymanian status under s. 18 (5). That allegation is denied and is nowhere apparent on the face of the documents filed at the requisite time. If Caymanian status could not have been granted at that time, and was therefore refused, the applicant would have been able to appeal that decision. The applicant thus lost the opportunity to appeal that decision. The applicant considers that there was and is no moratorium in place in relation to s. 18(4) of the Act and would like a declaration as to whether that is in fact the case. It is of public importance as to whether or not there is a moratorium in place since a number of applications for Caymanian status made by other individuals based on the grounds of naturalisation have not been considered for the above reasons. It is also to be noted that there is a concern that there is a moratorium in place in any event since it would appear to breach the principles of proportionality.
- y. The applicant humbly requests that this Honourable Court grant her a declaration as follows:
 - a. That the grant of Caymanian status has not been taken away from the applicant by way of an order and until it is then she still has Caymanian status.

- b. That by way of an order of certiorari, the decision to grant the applicant Caymanian status pursuant to s. 18(5) of the Act be quashed as it was contrary to natural justice.
- c. That there is no moratorium in place with regard to s. 18 (4) of the Act: If there was and still is a moratorium in place then such a moratorium would offend against the principles of proportionality.
- d. If there was and is no moratorium in place in relation to s. 18 (4) of the Act, that by an order of mandamus, the matter be remitted to the Board so that it may review the original application by her for the grant of Caymanian status pursuant to s. 18 (4).

A handwritten signature in black ink, appearing to read 'C. H. Allen', with a long horizontal stroke extending to the right.

These Grounds were filed by C. H. Allen of Brooks & Brooks on behalf of the applicant whose address for service is P.O. Box 1355 GT, One Artillery Court, Grand Cayman, Cayman Islands.