

No. 6

Notice of Originating Motion (0.8, r3)

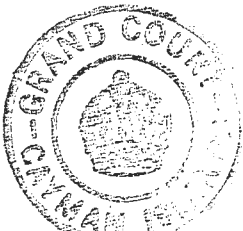
IN THE GRAND COURT OF THE CAYMAN ISLANDS

GC173
CAUSE NO. OF 2015

IN THE MATTER OF SECTIONS 15(7) AND 16(4) 17 OF THE IMMIGRATION LAW (2014 REVISION), AS AMENDED.

AND IN THE MATTER OF A DECISION BY THE IMMIGRATION APPEALS TRIBUNAL DATED 7TH SEPTEMBER 2015 DISMISSING AN APPEAL FOR THE GRANT OF A RIGHT TO PERMANENT RESIDENCE

AND IN THE MATTER OF MILTON ARTHUR JOHN BUCHANAN



NOTICE OF ORIGINATING MOTION



TAKE NOTICE that the Grand Court at the Law Courts, George Town, Grand Cayman will be moved on _____ at _____ am/pm or as soon thereafter as counsel can be heard, by counsel on behalf of Milton Arthur John Buchanan

1. An order staying the decision of the Immigration Appeals Tribunal dated 7th September 2015 dismissing the appeal of the Appellant Milton Arthur John Buchanan against the decision of the Caymanian Status and Permanent Residency Board to refuse a grant of Permanent Residence to the Appellant ;
2. An order remitting the appeal to the Immigration Appeals Tribunal for rehearing and determination by it on the basis that its decision was wrong in law.
3. Such further, consequential, or other relief as to this Honourable Court seems just;
4. Costs

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

1. The Immigration Appeals Tribunal was wrong in law in determining that no valid grounds of appeal had been made out. In considering whether the Caymanian Status and Permanent Residency Board had acted unreasonably and/or contrary to the Principles of natural justice the Immigration Appeals Tribunal was bound by law to consider any evidence of procedural unfairness and in particular to consider whether the Caymanian Status and Permanent Residency Board had acted unlawfully in assessing the Appellants application by reference to certain materials which were either not provided to the Appellant thereby alerting him to the facts and inviting his submissions on the materials being relied on or were unauthorised materials not authorised by the Second Schedule to the Immigration Regulations that could have potentially redounded to his prejudice and detriment.
2. In particular the Appellant in his grounds of appeal submitted that it was illogical that he had been awarded only 18 points out of 20 for his occupation but 20 out of 20 for his Skills when both were scored with reference to the Employment Relations Department's Database. In its reasons for refusal the Caymanian Status and Permanent Residency Board failed to provide any information to the Appellant on this database and why he had scored differently under the two categories.
3. In relation to the assessment for Funds and Salary the Appellant submitted that it was unreasonable for the Caymanian Status and Permanent Residency Board to award only 5 points out of a possible 20 when according to the Immigration Regulations points would be awarded based on whether or not he had sufficient resources through income or investments to support himself. Having proven that he was employed at a very substantial salary of CI\$57,240.00 per annum and was in good financial standing with his bankers with no dependants the Appellant complained that he was provided no reason for such a low score out of a possible 20 points. In considering the award of a mere 5 points by the Caymanian Status and Permanent Residency Board the Immigration Appeals Tribunal failed to have regard to the fact that the Caymanian Status and Permanent Residency Board were using a point calculation chart which was unlawful even though they were aware of this unlawful application of a points calculation chart created in August 2009 by the Caymanian Status and Permanent Residency Board that redounded to the Appellants prejudice and detriment

4. The effect of the Caymanian Status and Permanent Residency Boards unlawful application of points resulted in the Appellant receiving only 97 points rather than the 100 points he needed to achieve the right to permanently reside thereby depriving him of that right altogether.
5. The Immigration Appeals Tribunal also failed to have regard to the fact that it was unconstitutional and therefore wrong in law for the Caymanian Status and Permanent Residency Board to fail in its duty as a public body to act in a lawful, rational, proportionate and procedurally fair manner and in a way that was not incompatible with the Bill of Rights.

Dated the ^{1st} day of Oct · 2015

Bodden & Bodden
Bodden & Bodden, Attorney-at Law

TO: The Clerk of the Court

AND TO: The Immigration Appeals Tribunal and the Attorney General's Chambers and the Chief Immigration Officer.

This Notice of Originating Motion was issued by Bodden & Bodden, Attorneys-at-Law for and on behalf of the Appellant whose address for service is that of his said attorneys, 878 West Bay Road, 2nd Floor Caribbean Plaza, Grand Cayman KY1-1003.