



GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2024

matter of an application by DANIEL HERMOSILLO HANON to apply for the
of the decision made pursuant to the Immigration (Transition) Act (2022
Revision) and Order 55 R.4 GCR.

And in the matter of the dismissal of an appeal against the decision of the Caymanian and
Permanent Residency Board by the Immigration Appeals Tribunal.

BETWEEN:

DANIEL HERMOSILLO HANON

APPLICANT

AND:

IMMIGRATION APPEALS TRIBUNAL

RESPONDENT

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be
moved on 2024 at or as soon thereafter as
counsel can be heard, by counsel on behalf of DANIEL HERMOSILLO HANON (the
Appellant) for an order that the decision of the Immigration Appeal Tribunal ("IAT"),
made in a letter dated 18 October 2024 wherein it decided that the Applicant has not
achieved the minimum points to receive a grant of permanent residency of 110 suggest that
the Tribunal erred in its decision and is therefore wrong as a matter of Law, fact and
evidence and that such decisions against the Appellant and/or be set aside or alternatively
that the matter be remitted to the IAT to reconsider the case pursuant to the applicable law
in place at that time.

And for an order that the costs of and incidental to this appeal may be paid by IAT

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

GROUND ON WHICH RELIEF IS SOUGHT

CONFLICT OF INTEREST

1. It is to be noted that when the initial application for Permanent Residency was
submitted by the Applicant to Workforce Opportunities & Residency Cayman, that
the then Chairman of that board was thereafter moved to be the
Chairperson/member of the Immigration Appeal Tribunal (the "IAT") and thus is
the same person who had considered and determined the original application and
now the appeal that was before it for the same person. It is clear that this person

had a clear conflict of interest and should never have sat on the IAT board.

2. That an elderly Caymanian employee formerly in employment with the Appellant's company resigned her position. That employee knows the chairperson of the IAT and it is understood that she made a complaint to that chairperson of the IAT. That in order to avoid any suggestion of a conflict of interest, for the reason set above and for this reason, it is submitted that the chairperson should have recused themselves from any decision making concerning the Appellant.

BRIEF BACKGROUND

3. The application for Permanent Residency was first filed on 20 October 2022 and was refused.
4. This matter was originally determined on 24 November 2023 according to the Immigration (Transition) Act (2022 Revision) (hereafter referred to as the "2022 Act"). The applicable regulations at the time is the Immigration Regulations (2019R). This matter was first determined before WORC on 24 November 2023 when 104.0 points were awarded. The Appeal against refusal was dismissed and the Appeal Statement is dated 28 December 2023

POINTS

5. The Appellant considers that it is a ground of appeal that the priority occupation list still has not been completed and thus there is in short a deliberate delay or lack of compliance with the extant Law and that he is therefore prejudiced in his application in that he cannot be considered for any points especially given that during Covid 19 the government was able to determine which employees were priority employees and could move around and attend their jobs. The Court is invited to have in mind that during the "lock down" many restaurants were open and staff able to attend work and prepare food which was then delivered to people's homes. One such other example of employees who were considered as priority employees included employees of shops, such as Fosters and Kirks.
6. The Appeal Statement also indicated that under Factor 2b that 12 pts were granted for obtaining a Bachelor's degree when in fact the Appellant had not only completed a three-year Bachelor's degree but also a two-year professional qualification course. The Appellant considers that he should therefore have received 15 pts. He would therefore have an additional 3 points and thus have accumulated 107 pts.
7. In the Appeal Statement it is stated at Factor 4 under Salary & Income that the applicant was initially only awarded 5 pts. This was because tribunal's error in finding the salary fell between \$40K - \$49.999K. That error was amended to 9 pts. However, based on the actual evidence, that figure is still incorrect. If one looks at the Applicant's salary as identified by the Tribunal, which will be addressed again below, his "...higher..." salary once other figures are taken into account is as

much as \$72K and should mean that the actual points awarded should be 11 pts. If it is correct to award 11 pts, then the additional 2 pts would give the Appellant 109 pts. Subject to further amendments at 10 below, that would give the Appellant enough points to be greater than the minimum points of 110 and would qualify the Appellant for the grant of Permanent Residency.

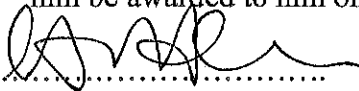
8. It should be mentioned here that after a further reconsideration before the IAT on 20 June 2024 when it was determined in writing that grounds of appeal had been established but that points might be deducted under Factor 5 under the heading of community development and that written reasons would be required from the Applicant to determine whether the IAT should not do so, such reconsideration was carried out. The Appellant was also permitted to provide any additional evidence as a result of any change of circumstances as set out in that letter.
9. The honourable Court is directed to a letter dated 24 July 2024 from the Applicant. The Court will note all items that were provided to the Chairperson of the IAT. Importantly, the Court will note that the Applicant has attached to the letter the Appellant's Professional Degree Translation. The documents will show that the Appellant aided 9 people to cook for more than 35 hours during the years 2020 to 2024. The Applicant submits that this assessment has not been properly carried out. For instance, Kaylyn Bodden and Christina Dixon were trained outside of work hours, so fell to be assessed and thus calculated at 2 pts per 35 hours. That latter young lady was personally mentored/trained over a two-year period (28 and 18 hrs). Other individuals were trained during the Appellant's work hours and thus at the rate of 1.5 pts per annum. At minimum the Appellant considers he should have received at least 10 points – 6 x 1.5 and 2 x 2 pts. If it is 8 people trained that fall to be considered in both rate bands from 2020 to 2024 then it is considered that this matter has not been properly considered and it is difficult to understand how points were deducted. The Appellant was originally awarded 8.5 points but then that was reduced to 6 points. This calculation by the IAT appears flawed and not transparent.
10. The Court is referred to the Letter dated 18 October 2024 where the IAT had awarded the Appellant 105.5 points. Thus, the additional points above of 3 and 2 should be added to that base number. I refer the Court to page 2 of that Letter, last paragraph. It is clear that the Chairperson by his own admission failed to consider the points that could be awarded on the “..higher...” salary of \$72K as he considered “...*it is of no consequence as the Appellant would still not reach the required threshold...*”. This logic and exercise of his powers and duty is misconceived and flawed.
11. It should also be mention here the points that were not included. These points fall under the hearing Community Involvement. Jamal Miller is not included for consideration in the 18 October 2024 IAT decision letter. He was trained for 48 hours in 2023 and for 76 hours in 2024. Kaylen Bodden was never trained on the

- job as stated in the IAT decision letter but in fact in the Applicant's spare time and therefore should attract 0.5 additional points. Derrymore Julian was trained in 2021 on the job for 36 hours which would attract 1.5 pts. The ground here is that these are additional points that should have been included. These points would be additional to the 110.5 points identified above.
12. The Appellant considers that even with the reduction made in 9 above from 8.5 to 6, once the correct salary figure (including dividends and gratuities) is calculated (2 in total) as well as including points from his professional qualification (3 in total) and is added to 105.5 pts then the Appellant will achieve sufficient points (110.5) to be granted Permanent Residency. This figure does not include points that were not taken into consideration for Community involvement, which would increase the total figure.
 13. The gravamen of the Appellants appeal is that (1) it provided fresh evidence by way of various letters and affidavits and that there have been material errors when calculating the various points to be allocated (2) the Chairperson who sat on both Boards was conflicted and should have recused himself.
 14. It would appear that these material errors on the part of the IAT have led to no points being allocated to the Appellant when clearly such points should have been so allocated.
 15. Section 19(1) of the Constitution requires the Court to apply a "heightened scrutiny" requiring the decision-making body to justify its decision.
 16. In the cases of *In the matter of an application for Permanent Residence by Hutchinson-Green/ In the matter of an application for Permanent Residence by Racz [2015 (2) CILR 75]* heard at the same time by the Chief Justice, that Court held:-

"...that the court had to apply a standard of heightened scrutiny in considering the appeal, as the right to lawful administrative action (as set out in s.19(1) of the Bill of Rights) was engaged, requiring a public decision-making body to make clear its reasons for reaching its conclusions, which the I.A.T. had failed to do, and reducing the usual margin of appreciation given to administrative bodies so that the evidential burden would be on the body to establish the rationality of its decision..."
 17. There is a singular failure to properly calculate the community services time contributed, the salary and the Applicant's qualifications.
 18. The Applicant is unable to understand that which was set out by the IAT. It is clear on the face of its own letter that the IAT has determined that it did not take into

account certain evidence because it had prematurely determined the matter. Notwithstanding a request by the Applicant to appear before the Tribunal it does not appear that it considered whether to permit the Applicant to attend or not. If they had attended then answers could have been provided to address the issue of conflict, the additional evidence and to address the correct figures.

19. The IAT “*..may.... in its absolute discretion, call upon either party or any persons as it deems necessary and relevant to address it.*”. The IAT is aware of the various provisions and could if it had exercised its administrative powers properly have clarified what were clear discrepancies.
20. Daniel Hermosillo Hanon humbly request that this matter be remitted back to the Immigration Appeals Tribunal for a proper consideration of his application, if possible, for the grant of Permanent Residency and in particular the fresh evidence that the IAT was duty bound to consider, which it refused to do, by its failure to properly exercise its powers and thus permit the Applicant a fair hearing. It is humbly submitted that a consideration of that material would have attracted a further 5 or so points as per the regulations and thus permit the Applicant to reach the necessary threshold to secure the grant of permanent residency of a minimum of 110 points.
21. Further, if successful then the Applicant will request any and all costs incurred by him be awarded to him on an indemnity basis.


.....
Clyde H. Allen, Chambers
31 October 2024