



COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2026

R OF SECTION 23 (2) OF THE CAYMANIAN PROTECTION ACT (2022 REVISION)

R OF ORDER 55 OF THE GRAND COURT RULES

AND IN THE MATTER OF AN APPLICATION FOR A RESIDENCY AND EMPLOYMENT RIGHTS CERTIFICATE
PURSUANT TO SECTION 37 (1) IMMIGRATION (TRANSITION) ACT (2022 REVISION).

JHANELLE JHANTELL MCKOGG

Appellant

-and-

IMMIGRATION APPEALS TRIBUNAL

Defendant

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 _____ 2026 at _____ a.m./p.m. or as soon thereafter as counsel can be heard, by counsel on behalf of the Plaintiff for an order in the following terms:

- i. The decision of the Defendant dated 12 June 2026 was erroneous in law, unreasonable and / or a breach of natural justice.
- ii. The decision of the Defendant dated 12 June 2026 is quashed and is to be remade.
- iii. The Court to award the Appellant 110 points and therefore Permanent Residence as per Order 55, R5 or
- iv. The matter is to be remitted to the Defendant for the reconsideration in accordance with the Law.

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

This Motion was filed by HSM Chambers, Attorneys at Law for and behalf of the Plaintiff herein whose address for service and correspondence is 68 Fort Street, George Town, PO BOX 31726, Grand Cayman KY1-1207, Cayman Islands

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

1. On 26 October 2013, the current Permanent Residence system was introduced. Save for a change to Factor 1, the System has essentially remained the same since 2013. No Permanent Residence applications submitted post 26 October 2013 were considered until 2017. When the Plaintiff applied for Permanent Residence, the relevant Act was the Immigration (Transition) Act (2022 Revision) ("the Act") and the Points system was found in the Immigration Regulations (2019 Revision)("the Regulations").
2. To obtain Permanent Residence, an applicant is required to be awarded 110 points in total, after the various factors are considered.
3. Despite the ability for various decision makers to consider PR applications and reach different conclusions based upon the same information, no policies have ever been published in regard to the consideration and determination of applications. The only guidance is found in the forms and the regulations themselves. The application form which the Appellant completed is reference as "WORC/RRW (2020/10) R37". On page 11/13 it states "Please see the online Guidance Notes for Detailed Instructions". There were and still are no "online guidance notes for detailed instructions".
4. On the same page it also states:

Proof of Contribution to Community (if applicable)

You must provide proof of Community Service which must be evidenced by way of a letter from the head of the organisation or an executive member of the organisation board on their letterhead, or from the Caymanian being mentored, confirming:

- (a) the nature of participation or contribution (financial, physical, personal or other - if other, letter to describe participation/contribution),*
- (b) time period covered (i.e., the number of weeks, months, or years) during which such participation/contribution occurred*
- (c) actual participation time (i.e., number of hours per year)*
- (d) monetary amount or donation.*

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In the case of sponsorship of a Caymanian - the letter should be accompanied by a certified copy of the Caymanian's passport ID page or other valid form of identification together with proof that he/she is a Caymanian together with proof of enrolment and course details from the tertiary institution during the relevant period along with your receipt of payments.

Points are awarded based on thresholds defined in the Regulations and in the R-30 Guidance Notes.

5. As a result, it is averred that the points system, in the absence of policies can be arbitrary and opaque and open to subjective assessments.
6. On 22 April 2022, the Appellant applied for Permanent Residence ("PR") and Residency and Employment Rights Certificate ("RERC").
7. The Appellant's initial application was rejected on or around 14 September 2023. The Appellant appealed this rejection and the Defendant accepted that there was an issue with the original decision and agreed to hear the matter de novo.
8. As part of the Appellant's submissions to the Defendant, the Appellant sought to be awarded points for the training and mentoring she provided to a Caymanian child. In support of this request was a letter from the child's parent and proof that the child was Caymanian.
9. In a decision dated 12 June 2026, the Defendant awarded the Appellant 109 points and therefore denied her application for PR and an RERC.
10. When considering the Appellant's Community Involvement and the award of points under Factor 5, the Defendant awarded the Appellant 3 points. The Defendant declined to award points in respect to the training and mentoring of a Caymanian child.
11. The Appellant appeals against this decision and in particular in regard to the award of points by the Defendant in respect to Factor 5.

Grounds of Appeal

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12. In summary the Appellant would contend that the Defendant was wrong to not grant her PR on the basis that:
- i. The Defendant misconstrued and/or misapplied Factor 5 — Community Minded /Integration into the Caymanian Community;
 - ii. The Defendant applied an impermissibly subjective and extra-statutory assessment of whether the Appellant's assistance to a Caymanian child was sufficiently "community minded";
 - iii. The Defendant imposed, or alternatively applied, an additional requirement not found in Factor 5, the application form, or the checklist/guidance requirements, namely that the Appellant had to demonstrate a separate "community benefit" beyond the specified regulatory criteria;
 - iv. The Defendant failed to determine whether sustained academic support to a Caymanian child was capable of constituting "training and/or mentoring of a Caymanian" within Factor 5;
 - v. The Defendant failed to take proper account of evidence capable of satisfying the Factor 5 criteria;
 - vi. The Defendant failed to give adequate and intelligible reasons for rejecting the Appellant's Factor 5 evidence;

Ground 1

13. The Defendant erred in law by adopting an unduly narrow construction of Factor 5 — Community Minded/Integration into the Caymanian Community.
14. Factor 5 is directed to the extent to which an applicant has successfully settled and integrated into Cayman society, including by reference to qualities such as adaptability, motivation, involvement in the community, and initiative.
15. Factor 5 expressly includes "training and mentoring of Caymanians outside normal work hours or related employer-sponsored activities" as an activity capable of attracting points.

16. The Defendant treated the Appellant's assistance with a Caymanian child's spelling and mathematics homework as falling outside the Factor 5 criteria. In doing so, it failed to apply the ordinary meaning of "training" and "mentoring" to the evidence before it.
17. The Appellant will contend that academic support, spelling assistance, mathematics homework assistance, educational encouragement, and sustained developmental support provided to a Caymanian child are capable, as a matter of law, of constituting training and/or mentoring within Factor 5.
18. The Defendant therefore misdirected itself by concluding that such assistance did not meet the criteria, without properly asking whether the evidence satisfied the "training and mentoring of Caymanians" limb of Factor 5.

Ground 2

19. The Defendant erred in law by applying an impermissibly subjective and extra-statutory assessment when it asked whether assisting a young child with spelling and mathematics homework had the "needed community mindedness to which Factor 5 is aimed".
20. The prescribed points system required the Defendant to determine whether the evidence fell within one of the specified Factor 5 categories. It did not permit the Defendant to reject evidence capable of falling within a specified category based on an unexplained evaluative impression that the activity was not sufficiently community-minded.
21. The Defendant's approach converted a structured regulatory criterion into a subjective assessment of the perceived worthiness or community value of the activity.
22. The Grand Court has recognised, in the permanent residence points context, the danger of criteria that are opaque, uncertain, arbitrary, or dependent on merely subjective assessments. In *Hutchinson-Green and Racz v Immigration Appeals Tribunal*, the Court observed that it was difficult to imagine a policy more "opaque, uncertain and prone to arbitrariness" than one by which points were allocated based upon "merely subjective assessments". The Court further

expected the relevant reviews and adjustments to be carried out in a manner capable of withstanding heightened scrutiny.

23. The Defendant's approach to Factor 5 was erroneous in law, unreasonable, and/or contrary to the requirement that the points system be applied by reference to lawful and objective criteria.

Ground 3

24. The Defendant erred in law by imposing, or alternatively applying, a requirement not found in Factor 5, the application form, or the checklist/guidance requirements.
25. Factor 5 required the Defendant to determine whether the Appellant's evidence demonstrated training and/or mentoring of a Caymanian, outside normal work hours or related employer-sponsored activities, for the required minimum number of hours annually.
26. The prescribed criteria did not require the Appellant to provide a separate explanation of "community benefit" or to demonstrate, beyond the specified category itself, that the activity possessed the "needed community mindedness".
27. The application form and checklist similarly required proof of community involvement or community service by reference to the nature of the participation or contribution, the period covered, and the number of hours per year. They did not require the Appellant to articulate or prove a separate community-benefit test.
28. If and insofar as the Defendant treated Factor 5 as requiring proof of a separate community benefit beyond the specified regulatory criteria, it unlawfully fettered or constrained the Factor 5 assessment by reference to an extra-statutory requirement.
29. Accordingly, the Defendant misdirected itself, applied an irrelevant and extra-statutory consideration, and/or unlawfully fettered the Factor 5 assessment by treating the absence of an articulated "community benefit" as a basis for refusing to award further points.

Ground 4

30. The Defendant failed to take proper account of relevant evidence contained in the letter from the Caymanian's mother dated 14 November 2025, thus erring in law.
31. That evidence included that:
- a. the beneficiary of the support was a Caymanian child;
 - b. the Appellant's assistance was provided over a sustained period, from 20 March 2021 to present;
 - c. the Appellant provided academic support, including assistance with spelling and school mathematics homework;
 - d. the support contributed positively to the child's development and academic performance; and
 - e. the Appellant provided approximately 288 hours annually, materially exceeding the minimum annual hours threshold referred to in Factor 5.
32. The evidence was capable of satisfying the relevant Factor 5 criteria, namely training and/or mentoring of a Caymanian outside normal work hours or related employer-sponsored activities.

Ground 5

33. The Defendant erred in law in finding that the Caymanian mother's evidence was not sufficient without identifying any legally relevant deficiency in that evidence.
34. The Defendant did not find that the annual hours were insufficient. It recorded that assistance was provided for up to 288 hours annually.
35. The Defendant did not find that the beneficiary was not Caymanian. It recorded that assistance was provided to a Caymanian child.

36. The Defendant did not identify any finding that the support was provided within the Appellant's normal work hours or related employer-sponsored activities.
37. The Defendant did not identify any documentary deficiency as the basis for rejecting the evidence.
38. In those circumstances, the Defendant was required to explain why evidence of sustained academic support, spelling assistance, mathematics homework assistance, and developmental support to a Caymanian child was not legally or evidentially sufficient to qualify as training and/or mentoring under Factor 5.
39. Its failure to do so was an error of law.
40. The standard of reasons requires that the reasons be intelligible and adequate, enabling the reader to understand why the matter was decided as it was and how the principal important controversial issues were resolved. That principle was stated by the House of Lords in *South Bucks District Council v Porter (No 2)* [2004] UKHL 33; [2004] 1 WLR 1953.
41. The principle controversial issue in respect to the letter of 14 November 2025 is "did the letter qualify or was it capable of qualifying, as providing evidence of training and mentoring of a Caymanian under Factor 5".
42. In this case the Defendant seemingly accepted evidence of academic support and assistance. The Defendant relied upon a definition of "training" which included the provision of providing instructions for a particular skill. The Defendant then fails however to explain in sufficient detail why the training and mentoring provided by the Appellant should not have points awarded.
43. In those circumstances, and applying the requirement that reasons must be intelligible and adequate, the Defendant was required to identify the legally relevant deficiency in the letter of 14 November 2025. In particular, the Defendant was required to explain why evidence of sustained academic support, spelling assistance, mathematics homework assistance, and developmental support to a Caymanian child was not legally or evidentially sufficient to qualify as training and/or mentoring under Factor 5. Without that explanation, the Appellant cannot know why the evidence was rejected, and the Court cannot determine whether the Defendant applied the correct legal test.

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Conclusion

44. The Appellant requests that the decision is quashed. Because the Appellant is only 1 point short of the 110 point threshold it is requested that the Court utilises it's power as set out in Order 55, rule 7(5) and awards the Appellant Permanent Residence.
45. However, if the Court does not feel that this is correct, it is requested that the matter be remitted to the Defendant.

A handwritten signature in blue ink that reads "HSM CHAMBERS". The signature is written in a cursive, slightly stylized font. Below the signature is a horizontal line.**HSM CHAMBERS**