REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No**. CV2016-01749**

IN THE MATTER OF SECTION 22 (2) OF THE IMMIGRATION ACT CHAPTER 18:01

AND

IN THE MATTER OF THE APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW OF BEVERLEY BURROWES, MARK BURROWES (SENIOR) AND MARK BURROWES (JUNIOR) PURSUANT TO PART 56.3 OF THE CIVIL PROCEEDINGS RULES 1998 AS AMENDED THE JUDICIAL REVIEW ACT,2000.

BETWEEN

BEVERLEY BURROWES

1st Claimant/Applicant

MARK BURROWES

2nd Claimant/Applicant

BEVERLEY BURROWES as next friend of MARK BURROWES JNR

3rd Claimant/Applicant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOGAGO[1]

1st Defendant

CHIEF IMMIGRATION OFFICER

2nd Defendant

BEFORE THE HONOURABLE MADAME JUSTICE DEAN-ARMORER

APPEARANCES:
Mr. Douglas Mendes S.C., instructed by Ms. Diane Mano and Tamara Sylvester attorneys-at-law for the Claimants
Ms. Nadine Nabbie instructed by Mr S. Julien, attorneys-at-law for the Defendant

[1] By Order dated May 23, 2016, this Claim was discontinued as against the Attorney-General.

JUDGMENT

Introduction

1. In this application for Judicial Review the Claimants, Beverley and Mark Burrowes, together with their minor son, Mark Burrowes Junior, seek judicial review of the decision of the Chief Immigration Officer (CIO) to initiate a Special Inquiry under Section 22, ***Immigration Act*** Chap 18:01.

Procedural History

2. On May 23, 2016, the Claimants applied for the Court's leave to apply for Judicial Review[2]. They were seeking numerous items of relief in relation to decisions made by the Chief Immigration Officer, regarding their residency status, here in Trinidad and Tobago. The items of relief sought are as follows:

> *"1) An Order of certiorari quashing the decision of the Chief Immigration Officer his agents and/servants, initiating and/or prosecuting and/or continuing the process of Special Inquiry under Section 22 of Immigration Act Chapter, 18:01, during the pendency [sic] the applications for permanent residency by the Claimants under Section 5(3) that of the Immigration Act Ch 18:01 are before the Minister of National Security for decision.*

[2] The application for leave to apply for judicial review was made, as required, under Part 56.3 CPR

2)An order certiorari quashing the decision of the Chief Immigration Officer to initiate and prosecute the Claimants by way of Special Inquiry under Section 22 of the Immigration Act Ch 18:01.

3)An Order of prohibition staying all or any proceedings under the Immigration Act Ch 18:01 by the Chief Immigration Officer allowing for the detention or deportation of the Claimants until the decision of the Minister of National Security in relation to the application by the Claimants to the Minister for permanent residency under Section 5(3) of the Immigration Act Ch 18:01.

4)An Order prohibiting the Chief Immigration Officer his servants and/or agents from harassing, interfering with, or detaining the Claimants in any manner whatsoever until the determination of the application for permanent residency of the Claimant by the Minister of National Security.

5) An Order prohibiting the Chief Immigration Officer his servants and/or agents from committing any acts that adversely affects or interferes with or renders nugatory the exercise of the discretion of the Minister of National Security in relation to the pending application of the Claimants for permanent residency namely:

a.Deporting the Claimants during the pending of the said application;

b.Detaining in any manner whatsoever during the pending of the said application;

c.Arresting and/or threatening the Claimants with arrest and/or detention of the said Claimants during the pending of the said application.

6) An order of mandamus order the Chief Immigration Officer his servants and/or agents to report to, and keep informed, the Minister of National Security, of all decisions concerning or affecting the freedom of the Claimants while awaiting the decision of the Minister of National Security.

7)An Order of certiorari revoking the Orders of Supervision of the Chief Immigration Officer dated 18th May, 2016, or alternatively an Order staying the expiration of the said Orders of Supervision pending the determination of the application of the Claimants by the Minister of National Security.

8)A Declaration that the Claimants are entitled to the following legitimate expectations:

(a) A legitimate expectation that the Second Defendant would facilitate the hearing and determination of the pending application of the Claimants under Section 5(3) of the Immigration Act Ch 18:01

(b) A legitimate expectation that the Special Inquiry would be conducted in public and in accordance with the principles of natural justice.

9)An interim Order staying the Special Inquiry scheduled for Tuesday 24th May 2016 at the office of the Chief Immigration Officer until the determination of this application for judicial review.

10) An Interim Order:

a.Staying the commencement and prosecution of the Special Inquiry undertaken by the Chief Immigration Officer pending the receipt of the following documents by Attorney-at-laws [sic] for the Claimants.

i. All and/or any reports submitted by or to the Chief Immigration Officer concerning the Claimants.

ii. Copies of all evidence to be considered by the Chief Immigration Officer his servant [sic] and/or agents at or during the said Special Inquiry.

iii. the names of all or any agents and/servants of the Chief Immigration Officer who have submitted information for the consideration of the Special Inquiry.

iv.Full disclosure of any statements or documents received by the Chief Immigration Officer his servants and/or agents concerning the Claimants; and after the elapse of at least 14 days thereafter.

b. Ordering [sic] the Chief Immigration Officer to return to the Claimants, the passports of the Claimants until the determination of the said application by the Minister of National Security.

3. Prior to the grant of leave to apply for judicial review, the Court heard submissions, in respect of the Claimants' application for a stay of a Special Inquiry carded for May 24, 2016. On November 18, 2016, the Court granted the stay pending the hearing and determination of the application and granted leave to the Applicants to apply for judicial review.

4. On December 12, 2016, the Claimants filed their Fixed Date Claim Form. This was supported by the affidavit of Beverley Burrowes. The Defendant, in opposition filed an affidavit sworn by Gewan Harricoo[3]. In reply, the Claimant filed an affidavit of Beverley Burrowes on August 09, 2017.

5. Parties relied on their written submissions. The Claimants' Submissions were filed on October 31, 2017. The Defendant's Submissions were filed on January 12, 2018 and the Claimant replied on February 19, 2018.

Facts

6. The First and Second Claimants herein are both citizens of Guyana. The First Claimant, Mrs. Burrowes is married to the Second Claimant, Mr. Mark Burrowes. The third Claimant, Mark Junior, is the minor son of the couple.

7. The year 2002, had been a very grim time for the Guyanese population. Prisoners had escaped from the Guyanese prison, and were at large, committing violent crimes within the village, in which the Claimants lived. This undoubtedly endangered the lives of the Claimants, together with other citizens.

[3] Affidavit of Gewan Harricoo filed on July 12, 2017.

8. Apart from the criminal acts which continued to plague the country, there had been a change of Government in Guyana. As a result, Mr. Burrowes, who had been employed at the Guyana Forestry Commission as a Carpenter and Joiner, was retrenched.

9. The family, according to Mrs. Burrowes, not only lived in fear, but struggled to make ends meet[4]. In search of a better quality of life, Mr. and Mrs. Burrowes, came to Trinidad in August, 2003 together with their son, Mark Junior who was only six months old[5]. In fact, Mr. Burrowes was recorded as having entered Trinidad on August 7, 2003 and Mrs. Burrowes, on August 13, 2003[6]. There is no record of Mark Jr, having entered, possibly because during that period of time, minors were allowed to travel on their parents' passports.[7]

10. Since the year 2006, Mrs. Burrowes had been employed as a Legal Secretary in a law firm, here in Trinidad and has been pursuing a Diploma in Business Administration at the University of the West Indies. It is Mrs. Burrowes' evidence that she had been unaware that she was not permitted to work without a valid work permit. The Claimant would therefore have been in breach of Regulation 10(1) ***Immigration Regulations***[8] in relation to the work permit, and in breach of Regulation 9(6)(a)-(b) ***Immigration Regulations***[9] as it relates to the student permit[10].

[4] See paragraph 8
[5] At para 7
[6] See the affidavit of Gewan Harricoo at paragraph 7
[7] Ibid
[8] Immigration Act Ch 18:01
[9] Ibid

11. Mr. Burrowes, for his part, owned a registered construction business and pays NIS for himself and his employees. His business was registered in the year 2008, and he had been assigned a BIR number. Mrs. Burrowes has annexed the Certificate of Registration as *"B.B.5"*. Mr. Burrowes has not given any evidence in these proceedings.

12. Mr. Harricoo, who had given evidence on behalf of the Defendant, indicated that he had no information in relation to any business venture by Mr. Burrowes or any NIS contributions, allegedly made by him. In that regard, Mr. Burrowes was in breach of Regulation 10(1) of the ***Immigration Regulations*** and was liable to be charged under section 42(1) of the ***Act***[11].

13. Mr. and Mrs. Burrowes, together with Mark Jr, applied on two occasions for permanent residency. The first application was made on June 16, 2008 pursuant to section 5(3) ***Immigration Act***[12] and, the second application was filed on April 27, 2015.

The First Application

14. I will firstly deal with the history of the 2008 applications which were forwarded to the Chief Immigration Officer (CIO) on July 9, 2008.

15. Thereafter, the Claimants were interviewed on October 07, 2009 and a report was submitted to the Permanent Secretary, Ministry of National Security for final decision. This report was dated July 29, 2010 and the contents stated that the Claimants were not

[11] See paragraph 10 of the affidavit of Gewan Harricoo
[12] See paragraph 12 of the Affidavit of Gewan Harricoo, and exhibit "GH1"

recommended for permanent residency but the applications were still forwarded to the Minister for his consideration.[13].

16. However, this application was denied by the Ministry of National Security by way of a letter dated January 21, 2011, signed by the Permanent Secretary[14]. The contents of the letter are set out below:

> *"Dear Mr. & Mrs. Burrowes*
>
> *Reference is made to your application dated June 16, 2008 requesting Resident Status of the Republic of Trinidad and Tobago.*
>
> *The Honourable Minister after careful consideration regretfully wishes to inform you that your application has been unsuccessful.*
>
> *Please contact the Immigration Division, Frederick Street, Port of Spain, immediately upon receipt of this notification for further instructions, please."*

17. On June 01, 2011, Mr. and Mrs. Burrowes, wrote to the said Minister requesting him to reconsider their applications[15]. By this time, however, there had been a change of Government. Consequently, there was a newly appointed Minister of National Security. Fresh letters were sent enquiring as to the status of the new application. These letters were dated July 26 and 27, 2011[16].

[13] See paragraph 13 of the Affidavit of Gewan Harricoo, and exhibit "GH2"
[14] Annexed as B.B.6 to the Affidavit of Mrs. Burrowes filed on December 09, 2016
[15] See the letter of June 01, 2011, exhibited as "G.H.3"
[16] Letters dated July 26, 2011 and July 27, 2011 exhibited as "B.B.7."

18. The Office of the Chief Immigration Officer responded by way of a letter dated April 23, 2012[17]. This letter requested that certain documents be presented at the interview, and a disclaimer was made, that failure to submit all requested documents, would result in a delay of the application process. The Claimants received this letter in May, 2012.

19. On August 10, 2012, the Claimants visited the Immigration Division for a document check[18]. A letter of same date was given to the Claimants and an interview was scheduled for September 26, 2012[19]. When September 26, 2012 arrived, the Claimants were interviewed by Ms. Ria Padmore.

20. During the interview, Mrs. Burrowes was advised to apply for work permits for herself and her husband, and for the student permit[20] for Mark Jr. An *"application for extension of landing certificate"* was issued to Mr. and Mrs. Burrowes and on the application the abbreviation "SP" was endorsed indicating that an application for a student permit was pending[21].

21. Ms. Padmore compiled a report which was submitted to the CIO[22]. Thereafter, on February 13, 2013, the CIO submitted his report, dated December 7, 2012, to the Permanent Secretary, Ministry of National Security. The report stated that the applications lacked merit, and the Claimants were again not recommended for permanent residency[23].

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[17] Exhibited as "B.B.8"
[18] See paragraph 16 of the affidavit of Gewan Harricoo.
[19] See exhibit "G.H.4" of the affidavit of Gewan Harricoo, and paragraph 7 of the Affidavit if Response of Beverley Burrowes
[20] The application process for the student permit for Mark Jr is addressed later in the judgment under the heading "The Student Permit".
[21] See "B.B.17" annexed to the Affidavit in Response of Beverley Burrowes
[22] See paragraph 17 of the of the affidavit of Gewan Harricoo
[23] See exhibit "G.H.5"

22. In further compliance with the advice of the Immigration Division, the first Claimant attempted to obtain a work permit. On December 20, 2013, attorney-at-law, Mr. Gregory Delzin, as employer of Mrs. Burrowes, applied on her behalf, for a work permit[24]. This request was later denied by letter dated January 22, 2014, signed by the Permanent Secretary, Ministry of National Security. The letter stated that Mrs. Burrowes should visit the department to have her status regularised.

23. By memorandum dated January 24, 2014, the Permanent Security of the Ministry of National Security advised the CIO that the Honourable Minister had refused the Claimants' request to have their applications for permanent residency reconsidered[25].

24. Mrs. Burrowes deposed that it was not until March, 2015, upon visiting the Immigration Division, that they became aware that their application for reconsideration was refused[26].

The Second Application

25. During their visit to the Immigration Division in March, 2015, and upon receiving the advice of Mr. Rouff, Immigration Officer, the Claimants decided to re-file an application for permanent residency. Mrs. Burrowes indicated that it was only during the discussion with Mr. Rouff that they learnt of the importance of disclosing the existence of Mr. Burrowes' business[27]. Therefore, on April 27, 2015, a second application for permanent residency was

[24] Application for work permit exhibited as "B.B.11"
[25] See exhibit "G.H.6"
[26] See paragraph 23 of the Affidavit of Beverley Burrowes
[27] At paragraph 23 of the Affidavit of Mrs. Burrowes

made by the Claimants, pursuant to section 5(3) of the ***Act***. This application was acknowledged on April 29, 2015[28].

The Arrest and Detention, Orders for Supervision and Special Inquiry

26. On July 27, 2015, the Claimants visited the Immigration Division to submit an application for a student permit for Mark Jr. and, it was at this point, that Immigration Officials became aware that both Mr. and Mrs. Burrowes were residing illegally in Trinidad[29].They were referred to the Deportation and Investigative Unit. Mrs. Burrowes was interviewed by an Immigration Officer named Curlene Ramirez and a ***"Reasons for Arrest and Detention"*** form was signed by Ms. Ramirez. The form stated:

> *""Upon information received by the immigration department it is alleged that:-*
>
> *1.You are not a citizen or resident of Trinidad and Tobago*
>
> *2.You entered Trinidad and Tobago on or about 22nd August 2013 granted extension [sic] until 26th June, 2014, at the expiration of the certificate you remained illegally in the country. As well as you broke the terms and condition [sic] of the certificate. (Work without a permit)."*[30]

27. Mr. Burrowes was interviewed by an Immigration Officer named Dale Ramsingh. A "Reasons for Arrest and Detention" form was signed by Mr. Ramsingh which stated

> *"Upon information received by the immigration department it is alleged that:-*

[28] See exhibit " GH7"
[29] See paragraph 25 of the affidavit of Mr. Harricoo.
[30] See "G.H.10" of the affidavit of Gewan Harricoo

1. You are not a citizen or resident of Trinidad and Tobago

2.You entered Trinidad and Tobago on or about 22nd August 2013 and remained illegally in the country after the expiration of the certificate granted to you. Additionally you broke the terms and condition of the said certificate."[31]

28. The Court notes and accepts that, according to the evidence, the last entry into Trinidad is recorded as August 22, 2013[32].

29. Thereafter, Ms. Candace Flanders-King, Immigration Officer III issued three orders of supervision on July 27, 2015. These orders bore the names of Mr. and Mrs. Burrowes. On the order of supervision of Mr. Burrowes, Mark Jr. is listed as an accompanying minor and was therefore also under supervision. Thereafter numerous supervision orders were issued requiring the Claimants to report at two (2) to three (3) week intervals. At this time, the Claimants were required to surrender their passports as a condition contemplated by section 17 of the ***Act.***

30. Nearly one year later, on May 18, 2016, the Claimants again visited the Immigration Division, pursuant to an Order of Supervision dated May 04, 2016. The investigations in relation to their applications for permanent residency were done prior to Mr. and Mrs. Burrowes' visit on that day. In fact, Immigration Officer II, Timothy Ramdass submitted his report dated April 13, 2016 to Mr. Harricoo. Mr. Harricoo, in accordance with procedure, forwarded that report to the CIO. Upon considering the report dated April 13, 2016, the

[31] Ibid

[32] As per Reasons for Detention and paragraph 27 of the affidavit of Gewan Harricoo

CIO deemed Mr. and Mrs. Burrowes as *"ceased to be permitted entrants"*[33] for the purpose of section 9(4) ***Immigration Act*** Ch 18:01.

31. Moreover, Mr. and Mrs. Burrowes were served with an *Order to show Cause* and *Notice of Hearing in Deportation Proceedings* pursuant to section 22 of the ***Immigration Act***. These are exhibited as "G.H.13". Essentially these orders required the couple to attend a Special Inquiry under section 22 of the ***Immigration Act***. The orders were separately addressed to Beverley Ann Burrowes and Mark Burrowes and stated as follows:

> *" Upon information received by the Immigration Division, it is alleged that:*
>
> *1.You are not a citizen of Trinidad and Tobago*
>
> *2. You are a native of the Republic of Guyana*
>
> *3. And a Citizen of the Republic of Guyana*
>
> *4. You entered Trinidad and Tobago at Piarco International Airport*
>
> *On or about 22nd August, 2013*
>
> *1)**Remained illegally in the country after the expiry of the certificate granted to you***
>
> *2) **Working without a valid work permit***
>
> *AND ON the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to section 22(2) of the Immigration Act, 1969*

[33] See paragraph 29 of the Affidavit of Gewan Harricoo

WHEREFORE, you are ordered to appear for heading before a Special Inquiry Officer of the Immigration Division

At ….135 Henry Street, Port of Spain

On Tuesday 24th May, 2016 @ 9:30 am

And show why you should not be deported from Trinidad and Tobago on the Charges".

32. Concerned that the Special Inquiry would lead to their deportation, it was at that point, that Mrs. Burrowes alerted her attorneys-at-law who in turn, wrote to the Immigration Division by letters dated May 18 and 19, 2016, requesting copies of reports to be considered in the inquiry as well as the particulars of the charges as related to section 22 of ***the Act***.

33. Thereafter these proceedings were filed.

Issues

34. The following issues arise in this Claim:

1.Whether the Court's jurisdiction is extinguished by Section 30 of ***the Act***.

2.Whether the Second Defendant was infected by bias or mala fides.

3.Whether the Defendant had the requisite jurisdiction to hold the Special Inquiry.

4.Whether section 9(4) declaration were procedurally unfair and whether there was adequate disclosure.

5.Whether the Defendant as under a duty to allow for and to facilitate the exercise of the Minister.

6. Whether the Claimants held a legitimate expectation that the Special Inquiry would not be held until the Minister had made a decision, and whether the Claimants held a legitimate expectation that the Special Inquiry would be held in public.

The Ouster Provision

35. I will consider the ouster provision first, since this delimits the boundaries of my jurisdiction. Section 30 of the ***Act***, provides:

> *"No court has jurisdiction to review, quash, reverse or restrain or otherwise interfere with any proceedings decision or order of the Minister, the Chief Immigration Officer…."*

36. The authorities on the effect of an ouster provision establish that a Court may inquire into the validity of the exercise of any power, but must limit its inquiry to ascertaining the existence and scope of the power and not consider the sufficiency of the ground on which it has been exercised. See ***Francisco Jose Martinez Centeno v. Chief Immigration Officer HCA*** No. 969 of 1981.

37. The Court also has the power to review decisions on the grounds of a breach of natural justice and of taking into account irrelevant factors. See Rajendra Ramlogan, ***Judicial Review in the Commonwealth Caribbean***.

38. The Court therefore retains its jurisdiction, where the ground for review is directed at bias, procedural unfairness or lack of jurisdiction. Accordingly, there was no barrier to my considering these grounds, as canvassed by the Claimants.

Bias

39. The test for apparent bias was stated in ***Basdeo Panday v. Wellinton Virgil Mag App No. 75 of 2006*** by Archie, JA as he then was. His Lordship cited the case of Ebner v. The Official Trustee which formulated this three step test:

> *"i. First, one must identify what it is said might lead a judicial officer to decide a case otherwise than strictly on its merits;*
>
> *ii. Second, a logical connection between the matter/s and the feared deviation from impartiality has to be articulated;*
>
> *iii. Third, an assessment must be made whether a fair-minded observer would conclude that there was a real possibility that the case would not be decided impartially."*[34]

Ultimately, the Court is required to consider whether the fair minded observer would conclude that there was a real possibility that the case would not be decided impartially.

40. In these proceedings the Claimants allege bias by reason of the failure of Immigration Officers to make full disclosure, their failure to respond to letters and their failure to

[34] See Mag. App No. 75 of 2006 Panday v. Wellington Virgil, Reasons by Archie,JA (as he then was), para 7

provide appeal forms. None of these omissions were those of the Special Inquiry Tribunal which has not yet met to consider the case against the Claimants. In my view the fair-minded observer might find these omissions to be negligent, callous or uncaring on the part of the Immigration Department. In my view however, there is no basis for an allegation of bias on the part of the Special Inquiry tribunal in respect of which no allegation of default has been made.

Whether the Chief Immigration Officer lacked the jurisdiction to hold a special Inquiry

41. The jurisdiction of the Chief Immigration Officer to hold a special enquiry springs from section 23 (2) of ***the Act***. The section provides:

> "*Subject to any order or direction by the Minister, the Chief Immigration Officer shall upon receiving a written report under section 22 and where he considers that an enquiry is warranted, cause an enquiry to be held concerning the person respecting whom the report was made."*

42. It is well-established, that the Court is required to apply the literal rule of interpretation when construing a statute, by giving to words, their plain ordinary meanings[35].The plain ordinary meaning of section 23 (2)[36] suggests that the jurisdiction of the Chief Immigration Officer is triggered when the Chief Immigration Officer receives a written report under Section 22 of **the Act**. The uncontroverted evidence of Mr. Harricoo was that an investigation was being conducted by Timothy Ramdass, Immigration Officer II. Mr.

[35] See Maxwell on the Interpretation of Statutes (12th Edition) page 28
[36] Immigration Act Ch 18:01

Ramdass submitted a written report to Mr. Harricoo, who in turn submitted same to the Chief Immigration Officer. On the basis of the Ramdass report, the Chief Immigration Officer declared that the Claimants had ceased to be permitted entrants[37].

43. Learned Senior Counsel for the Claimant has argued that two factors must exist before the Chief Immigration Officer can be invested with the jurisdiction to a cause a special inquiry to be held. Learned Senior Counsel argues that:

> (a) the Defendant must have a report from a public officer containing full particulars of a declaration under section 9(4) that the Claimants have ceased to be permitted entrants.
>
> (b)there must be valid section 9(4) declarations in respect of the Claimants[38].

44. It is my view that the plain ordinary meaning of the provisions of section 23(2) do not call for the presence of the factors (a) and (b) above. Section 23(2) directs the Chief Immigration Officer in mandatory terms to cause an inquiry to be held where two factors exist:

> (i)In respect of factors cited from section 22(1)(d) to (i) of the Act, that the Chief Immigration Officer has received a report from a public officer.

In these proceedings, the relevant subsection was section 22(1)(f). Accordingly, the operation of section 23 depends on the receipt by the CIO of a report from a public officer.

> (ii)The second factor is the exercise of the Chief Immigration Officer's discretion and the consideration that an inquiry is warranted

[37] See paragraph 29 of the affidavit of Mr. Harricoo.
[38] See the Written Submissions for the Claimant at paragraphs 3.36-3See the Written Submissions for the Claimant at paragraphs 3.36-39

45. There is, in fact, no stipulation at section 23(2)[39] as to the content of the report on which the Chief Immigration Officer is entitled to act. There certainly is no requirement that the report should contain full particulars or any particulars at all. The only stipulation in section 23(2)[40], in respect of the report, is that it be a written report and that it be received by the CIO under section 22 of ***the Act.***

46. The evidence of Mr. Harricoo was based on the records of his department. He testified that he received the written report of Timothy Ramdass and forwarded same to the CIO. This evidence satisfies the first limb of section 23(2). The second limb pertains to the exercise of her discretion. There was no question that she did in fact exercise her discretion.

47. It was therefore my view that the two limbs of section 23(2) were satisfied. Although, the exercise of her discretion may be set aside for bias or irrationality, the Court may not inquire as to the sufficiency of the grounds for her discretion. See ***Jose Martinez Centeno v. Chief Immigration Officer***[41]

48. It was therefore my view that there was nothing to deprive the Chief Immigration of her jurisdiction under section 23(2)[42] to cause an inquiry to be held.

Whether the decision of the CIO was procedurally unfair

49. The Claimants contend that the decision of the CIO to issue a declaration under section 9(4) of ***the Act***[43] was flawed by its procedural unfairness.

[39] Immigration Act
[40] Immigration Act Ch 18:01
[41] Jose Martinez Centeno v. CIO HC 1983 HC 119
[42] Immigration Act Ch 18:01
[43] Immigration Act Ch 18:01

50. The Claimants argue, in particular, that they had the right to be notified of the investigations which led to the section 9(4) declaration and the right to be heard, in the course of those investigations. The Claimants allege further, that the section 9(4) declaration had not been disclosed with the Notice to Show cause.

51. There was no dispute, that the fact of the investigations had not been disclosed to the Claimants and that they had no opportunity to be heard, either in the course of the investigations or just prior to the making of the section 9(4) declaration.

52. In support of their contention, the Claimants rely on the vintage authority of ***Cooper v. Wandsworth Board***[44] where the Court of Common Pleas held that the Plaintiff, as a home owner had a right to be heard, prior to the demolition of his house, although there was no statutory right to be heard.

53. The Claimants relied as well on the Canadian case of ***Baker v. Canada***[45] where the Canadian Supreme Court heard the case of a Jamaican National in respect of whom an order for deportation had been made. She applied for an exemption, on compassionate and humanitarian grounds, from a requirement that the application for permanent residency be made outside of Canada. Among the criteria of fairness enunciated by the Supreme Court were:

    (i) The nature of the decision being made and the process being followed

    (ii) The nature of the statutory scheme

    (iii) The importance of the decision to the individuals affected

[44] (1863) 14 C.B.(N.S) 180
[45] [1999] 2 SCR 817

54. The defendants admitted that there had been no notification of the Ramdass investigation and no opportunity granted to the Claimants to be heard during the investigation .It was however the contention of the Defendant that according to the statutory scheme, the Claimants' right to be heard arises at the Special Inquiry itself and not at the investigative stage.[46]

55. It was my view that the submission, on behalf of the Defendant is supported an examination of the scheme of the Act. By section 24(2) of ***the Act***, the person before the Special Inquiry is entitled to conduct his case in person or by counsel. It is clear therefore that the Special Inquiry is conducted like judicial proceedings, at the end of which the Special Inquiry Officer is required to give his decision in writing. See section 25(1).

56. The person before a Special Inquiry has a right of appeal to the Minister, upon whom is conferred the power to allow or dismiss the appeal or to quash the decision of the Special Inquiry Officer and substitute his own decision. See section 27(4)[47].

57. Accordingly, it was my view that by the scheme of the ***Immigration Act***[48] contemplated that the right to be heard, including the right to request disclosure, would accrue to the Claimants during the hearing of the Special Inquiry and not before.

[46] See Pearlberg v Varty [1972] 1 All ER 534 as example where the right to be heard was held to accrue at a later at stage.
[47] Immigration Act Ch 18:01
[48] Ibid

The Passports

58. By paragraph 10(b) of their Fixed Date Claim Form, the Claimants seek the return of their passports until the determination of the application for permanent residency by the Minister of National Security.

59. It has not been disputed that, upon the issue of the supervision orders on July 27, 205, the CIO seized the passports of the Claimants. The Claimants were ordered to surrender their passports as one of the conditions placed under the order for supervision[49].

60. Conditions are imposed, upon the issue of the supervision order, pursuant to section 17 of ***the Act***. Section 17 provides:

> *"17. (1) Subject to any order or direction to the contrary by the Minister, a person taken into custody or detained may be granted conditional release or an order of supervision in the prescribed form under such conditions, respecting the time and place at which he will report for examination, inquiry, deportation or rejection on payment of a security deposit or other conditions, as may be satisfactory, to the Chief Immigration Officer.*
>
> *(2) Where a person fails to comply with any of the conditions under which he is released from custody or detention he may without warrant be retaken into custody forthwith and any security deposit made as a condition of his release shall be forfeited and shall form part of the general revenue".*

[49] See paragraph 25 of the affidavit of Gewan Harricoo

61. I agreed with learned Counsel for the Defendant that the seizure of the passport fell within the conditions contemplated at section 17(1) of ***the Act*****.** The conditions are imposed under the authority of the CIO, and are protected by the ouster provision, unless there is an allegation of bias, procedural unfairness or a lack of jurisdiction. None of those grounds had been advanced in relation to the passport.

62. Learned Senior Counsel for the Claimants cited and relied on two authorities: ***Ghani v. Jones***[50] and ***Napijalo v. Croatia***[51]***. Ghani v. Jones***[52], is well known as establishing the common law basis in which police authorities may conduct the exercise of search and seizure. There was no suggestion, however, that the seizure of passports in ***Ghani v. Jones***[53] was pursuant to a statutory power to impose conditions, which could have included the seizure of passports.

63. The same can be said of ***Napijalo v. Croatia***[54] where the applicant's passport had been retained for his failure to pay a fine. The applicant approached the European Court of Human Right (ECHR) on the basis of the unreasonable length of time taken for the conclusion of proceedings towards the return of his passport. There was no suggestion that the passport had been seized pursuant to statutory authority to do so. Accordingly, it is my view that both authorities are distinguishable.

[50] [1970] 1 Q.B. 693
[51] [2003] ECHR 66485/01
[52] [1970] 1 Q.B. 693
[53] [1970] 1 Q.B. 693
[54] [2003] ECHR 66485/01

64. The Court observes further that the passports were seized on July 27, 2015. No proceedings in judicial review were instituted at that time. It was therefore arguable that the time has now passed to make such a complaint by way of judicial review proceedings.

Legitimate Expectation

65. The Claimants contend that they held a legitimate expectation that the Special Inquiry would not be held, until the Minister had made his decision. In my view, the Claimants have neither alleged nor proved either a express promise or regular practice, on which the Court would find the existence of a legitimate expectation. Accordingly, it is my view that the ground of legitimate expectation is without merit. [55]

    In my view, the Claimants have not alleged either an express promise or regular practice, on which the Court could find the existence of a legitimate expectation. Accordingly, it is my view that the ground of legitimate expectation is without merit.

Duty to allow for and facilitate the discretion of the Minister

66. One issue remains, that is to say whether the Chief Immigration Officer was obligated to allow for and to facilitate the discretion of the Minister of National Security.

67. In this Claim, the evidence of Mr. Harricoo was not in dispute. Timothy Ramdass, Immigration Officer II, conducted an investigation and submitted a written report through Mr. Harricoo to the CIO. Having seen that written report, the Chief Immigration Officer

[55] See CCSU v Minister for the Civil Service [1984] ALL ER 935 per Lord Fraser page 944 a-b, where Lord Fraser defined a legitimate expectation thus: legitimate, or reasonable, expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice.

exercised her discretion and issued orders pursuant to section 9(4) of ***the Act***[56], that the Claimants had ceased to be permitted entrants[57].

68. Declarations were made by the Chief Immigration Officer on May 12th, 2016, declaring that the Claimants had ceased to be permitted entrants with effect from June 27, 2016[58].

69. When the Claimants reported to the Immigration Division on May 01, 2016, in obedience to the supervision orders, they were each served with an Order to Hold Enquiry[59]. Orders to show Cause and Notice of Hearing in Deportation Proceeding issued under section 22 of ***the Act*** [60].

70. I have already decided that the Chief Immigration Officer was properly invested with the requisite jurisdiction to act as she did. The question which arises was whether she should have delayed the exercise of her discretion in anticipation of a decision by the Minister of National Security.

71. It was common ground, in these proceedings, that each supervision order which had been issued to the Claimants had been endorsed with the words:

"Pending report to the Minister for P.R"

It has not been disputed that "P.R." stood for permanent residency and that the endorsement meant that the application for permanent residency was pending before the Minister of National Security. No one was able to predict how the Minister would decide. It was within the Minister's power to refuse the applications, as had been done

[56] Immigration Act Ch 18:01
[57] See paragraph 29 of the affidavit of Gewan Harricoo
[58] See "G.H.11"
[59] See "G.H. 13"
[60] See "G.H. 12"

by one of his predecessors in 2011. On the other hand, it was well within the power of the Minster to grant the applications.

72. In my view, the Chief Immigration Officer must have envisaged the possibility that the Minister would grant the applications for permanent residency, at some time in the future either before or after the determination of the Special Inquiry. In such eventuality, the Ministerial Order would be rendered nugatory, if the Claimants had already been deported pursuant to the results of the Special Inquiry.

73. It was my view, that the scheme of section 23(2)[61], by conferring discretionary power on the Chief Immigration Officer, subject to any order or direction of the Minister, implicitly required her to foresee, that a pending application could be viewed favourably by the Minister and that such future Ministerial Order or direction would be frustrated, if the Special Inquiry had ended with the deportation of the Claimants.

74. It is therefore my view that the scheme section 23(2)[62] required the Chief Immigration Officer to give way to the Minister and await the exercise of his discretion, if there is a pending application for permanent residency.

75. Accordingly, there will be judgment for the Claimants.

[61] Immigration Act Ch 18:01
[62] Ibid

Orders

76. An order of quashing the decision of the Chief Immigration Officer to initiate, prosecute or continue the process of Special Inquiry during the pending of application for permanent residency by the Claimants before the Minister of National security.

Date of Delivery: March 21, 2019

Justice Mira-Dean Armorer