

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain (Virtual Hearing)

Claim No. CV2020-00328

**In the Matter of an Application by Shoa Bin Yang and Hui Kuan Zhou for an Administrative
Order Under Part 56 of the Civil Proceedings Rules, 1998 (As Amended)**

And

In the Matter of Section 23(2) of the Immigration Act Chapter 18:01

BETWEEN

Shoa Bin Yang

First Claimant

Hui Kuan Zhou

Second Claimant

AND

Chief Immigration Officer

Defendant

Before the Honourable Madam Justice Eleanor Joye Donaldson-Honeywell

Delivered on: 27 April 2022

Appearances:

Mr. Saddam Hosein and Ms. Kavita Sarran, Attorneys-at-Law for the Claimants

Ms. Maria Belmar-Williams and Ms. Svetlana Dass, Attorneys-at-Law for the Defendant

JUDGMENT

A. Introduction

1. In this application, the Claimants seek judicial review of the decision of the Chief Immigration Officer (Defendant) to initiate a Special Inquiry under **Section 23** of the **Immigration Act Chap 18:01**. The Claimants contend that Special Inquiry proceedings, which could result in immediate deportation, ought not to be initiated while their applications for permanent residency are before the Minister of National Security (the Minister) for decision.

2. The reliefs claimed are set out in the fixed date claim, filed 27 January 2020, as follows:
 - a. An Order of certiorari quashing the decision of the Chief Immigration Officer her agents and/servants, initiating and/or prosecuting and/or continuing the process of Special Inquiry under **Section 23 of Immigration Act Chap. 18:01**, during the pendency of the applications for permanent residency by the Claimants under **Section 5(3) of the Immigration Act Chap. 18:01** before the Minister of National Security for decision.
 - b. 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 Chap. 18:01**.
 - c. An Order of prohibition staying all or any proceedings, namely the Special Inquiry under the **Immigration Act Chap. 18:01** by the Chief Immigration Officer, allowing for the detention or deportation of the Claimants until the determination of the applications of the Claimants for permanent residency

under **Section 5(3) of the Immigration Act Chap. 18:01** by the Minister of National Security.

- d. An Order prohibiting the Chief Immigration Officer, her 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 Claimants by the Minister of National Security.
- e. An Order prohibiting the Chief Immigration Officer, his servants and/or agents from committing any acts that adversely affect or interfere with or render 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:
 - i. Deporting the Claimants during the pendency of the said application;
 - ii. Detaining, in any manner whatsoever, during the pendency of the said application;
 - iii. Arresting and/or threatening the Claimants with arrest and/or detention of the said Claimants during the pendency of the said application.
- f. An Order of certiorari revoking the Orders of Supervision of the Chief Immigration Officer 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.
- g. Costs.
- h. Such further other orders, directions or writs as the Honourable Court considers just and as the circumstances of this case warrants pursuant to **Section 8 (1) (d) of the Judicial Review Act, Chap. 7:08.**

B. Factual Background

3. The First Claimant has resided in Trinidad and Tobago for approximately 25 years and the Second Claimant, his wife, for around 12 years. They have two children who are citizens of Trinidad and Tobago and attend school here.
4. The facts are outlined by Gewan Harricoo, on behalf of the Defendant, as being obtained from the records of the Immigration Division and by the First Claimant from personal knowledge.
5. The First Claimant entered Trinidad and Tobago on 17 July 1995 on a Chinese Passport. On arrival, he was granted a landing certificate valid until 16 October 1995 for vacation purposes. From the records, and the Claimant does not disagree, there were no extensions of that landing certificate sought or obtained prior to its expiration.
6. The Harricoo Affidavit outlines certain extensions applied for and granted in 2003 until 2006. It is the Defendant's contention that though the Immigration Division was responsible for the grants of these extensions, they were improper, as there was no record of valid extensions from 1995 to 2003.
7. The First Claimant applied for permanent residence on 4 May 2005. In June 2006, the First Claimant was informed that his application was refused. The Defendant alleges that this refusal was based on a report that the First Claimant had worked without a work permit. However, no such report is attached.
8. The First Claimant requested re-consideration of this application in July 2007. The First Claimant alleges an officer of the Defendant advised him that he was required to leave the country and re-enter. The Defendant's records contain an approved visa for the First Claimant dated 12 October 2007.

9. The First Claimant departed Trinidad and Tobago on 31 October 2007 and returned on 26 January 2008. The First Claimant contends he returned to China. On 11 July 2008, the Second Claimant is recorded to have arrived in Trinidad and Tobago. She was granted an entry certificate up to August 2008. The Claimants were married on 13 July 2008. The First Claimant was granted extensions on his entry certificate up to May 2009.
10. It is undisputed that the First Claimant opened and registered two restaurant businesses, but he claims that they were never operational.
11. The First Claimant made a second application for permanent residence on 12 March 2012. The Claimants also allege that the Second Claimant made a similar application (File A13-26-10); however, they do not provide a date of the application.
12. On 8 November 2012, both Claimants were detained for breaches of the Immigration Act. The First Claimant was detained for overstaying his entry certificate and for working without a valid work permit. The Second Claimant was detained for overstaying her entry certificate. The Second Claimant was placed on an Order of Supervision.
13. On 12 November 2012, the First Claimant paid a security bond in the sum of \$24,000, which is stated to have been received by the Immigration Division on 17 December 2012. The First Claimant was then released from detention on an Order of Supervision. The Claimant alleges he was released on 24 December 2012 while the Defendant alleges he was released three days earlier on 21 December 2012. The Immigration Division retained the Claimants' passports.

14. The Defendant's records show an application from the Second Claimant on 12 February 2013 for permanent residency with an interview scheduled for 21 November 2017.
15. The Defendant states that its records show that a Special Inquiry was held in relation to the Claimants on 18 November 2013, wherein the First Claimant admitted to have worked and earned profits without a valid work permit. The Defendant states the Claimants were granted Voluntary Departure and attached said grant to the Affidavit of Gewan Harricoo.
16. The Claimants left Trinidad and Tobago on 9 December 2013, travelled to Guyana and returned the same day. The Claimants were granted entry into Trinidad and Tobago (the Second Claimant upon payment of a bond) with entry certificates valid until 8 March 2014.
17. On 21 November 2017, the Claimants were interviewed in relation to their permanent residency applications. They were asked to provide further documentation in relation to their address in Trinidad and Tobago.
18. The Defendant alleges that the interviewing officer observed that the Claimants had once again overstayed their entry certificates. Their last extension was valid until June 2016. They were placed on Orders of Supervision and asked to return the next day. They were interviewed and admitted their failure to apply for further extension. They were issued Orders of Supervision and their passports retained.
19. The Defendant declared that the Claimants ceased to be permitted entrants as defined by the Immigration Act. A Special Inquiry was scheduled for 24 October 2019. There were numerous adjournments to accommodate the Claimants' Attorney-at-law.

20. The Claimants sent a pre-action protocol letter, dated 20 January 2020, to the Defendant indicating their intention to file for judicial review if the decision to hold a special inquiry was continued. The Defendant claims that it never received this letter.
21. The Claimants were issued with fresh Orders to show Cause and Notice of Hearing in Deportation Proceedings on 24 January 2020.
22. On 27 January 2020, the Claimants applied to the Court for leave to apply for judicial review. Leave was granted on 29 January 2020. The present claim was then filed, with an affidavit in support, on 12 February 2020. During the period of Case Management, the Claimants allege that the Defendant has continued to set dates for Special Inquiry into their files on 10 March 2021 and 8 April 2021.

C. Issues

23. The issues to be determined are:
 - a. Whether the Defendant ought to have awaited the decision of the Minister on the Claimants' applications for permanent residency before initiating and/or prosecuting and/or continuing the Special Inquiry;
 - b. Whether the Defendant wrongfully exercised her power to cause a Special Inquiry in the absence of the Minister's declaration that the Claimants ceased to be permitted entrants.

D. Law and Analysis

Whether the Defendant ought to have awaited the decision of the Minister on the Claimants' applications for permanent residency before initiating and/or prosecuting and/or continuing the Special Inquiry

24. **Section 23(2)** of the **Immigration Act** 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 inquiry is warranted, cause an inquiry to be held concerning the person respecting whom the report was made.”

25. **Section 5(3)** of the **Immigration Act** provides:

“For the purposes of subsection (1)(f) the Minister may in his discretion, confer the status of a resident on any person he considers fit.”

26. It is the Claimants’ submission that the potential for an adverse finding under Special Inquiry affects their applications to the Minister for permanent residency. Further, if an order of deportation is made against them, it could render a decision of the Minister on the permanent residency application nugatory.

27. The case of **Burrowes v Chief Immigration Officer CV2016-01749** supports the Claimants’ contention. At paras. 72-74, the court held that a Special Inquiry ought not to be held where it is proven that an application for permanent residency is pending before the Minister:

“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), 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) 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.”

28. The Defendant submits that the court in **Burrowes** failed to consider the discretion of the Minister to cancel any deportation order. The Defendant submits that the **Burrowes** interpretation did not consider the scheme of the Act as a whole. It is submitted that the existence of this discretion means that a deportation order could not render a Ministerial order for permanent residency nugatory.
29. However, this submission does not sufficiently address the critical point made by Dean Armourer J, as she then was, in **Burrowes** that **S.27(6)** may not forestall immediate deportation after the special enquiry, if it is allowed to continue.
30. The detailed history of the matter set out in the Defendant’s submissions vividly paints a picture of the Claimants’ failures to obtain extensions and work permits as required by the Immigration Act. However, the present case is on all fours with the **Burrowes** case regarding the status of the two sets of claimants. They were all faced with Special Inquiry proceedings that could result in immediate deportation. In addition, they had in common the fact that they had all been declared as persons who ceased to be permitted entrants while at the same time had pending applications before the Minister for permanent residency.
31. In the circumstances of this case, though the present Claimants have been far more egregious in their flouting of local immigration laws than the **Burrowes** family, the Special Inquiry ought not to have been convened while the permanent residency

application was pending before the Minister. There will be judgment for the Claimants on this point.

Whether the Defendant wrongfully exercised her power to cause a Special Inquiry in the absence of the Minister's declaration that the Claimants ceased to be permitted entrants.

32. The Claimant contends that the Chief Immigration Officer should only exercise her power under **Section 23(2)** of the **Act** to cause a Special Inquiry if she receives a report pursuant to **Section 22** of the **Act** with the proper declarations made by the Minister that the person ceased to be a permitted entrant.

33. The Defendant has sufficiently answered the Claimants' contention on this point by citing the **Delegation of Powers by the Minister to Efficiently Deport Illegal Immigrants Order, 1986** wherein the Minister of National Security authorized the Chief Immigration Officer to declare when a person described in **Section 9 (4)** of the **Immigration Act** has ceased to be a permitted entrant.

34. It is demonstrated, therefore, that the Chief Immigration Officer herself is authorized by statutory instrument to make such declarations. The Defendant submits that, in light of this authorization, the Chief Immigration Officer need not await the Minister's declaration that a person has ceased to be a permitted entrant before giving directions for the holding of a Special Inquiry. There is no evidence to show that the Chief Immigration Officer did not act pursuant to the Order empowering her to declare the Claimants as persons who ceased to be permitted entrants and she, therefore, is deemed to have acted in accordance with the Immigration Act.

35. As a matter of evidence, as pointed out by the Defendant, the uncontroverted evidence contained in para. 27 of the Affidavit of Gewan Harricoo, filed on 19 January 2021, is that the Chief Immigration Officer declared that both Claimants ceased to be permitted entrants in accordance with **Section 9(4)** of the **Immigration Act**.

36. This limb of the Claimants' submission fails.

E. Conclusion

37. The Claimants have succeeded in proving that the Defendant ought not to have initiated and continued the Special Inquiry proceedings against them while their application for permanent residency was pending before the Minister.

38. IT IS HEREBY ORDERED as follows:

- a. An Order of certiorari quashing the decision of the Chief Immigration Officer her agents and/servants, initiating and/or prosecuting and/or continuing the process of Special Inquiry under **Section 23 of Immigration Act Chap. 18:01**, during the pendency of the applications for permanent residency by the Claimants under **Section 5(3) of the Immigration Act Chap. 18:01** before the Minister of National Security for decision.
- b. An Order of prohibition staying all or any proceedings, namely the Special Inquiry, under the **Immigration Act Chap. 18:01** by the Chief Immigration Officer allowing for the detention or deportation of the Claimants until the determination of the applications of the Claimants for permanent residency under **Section 5(3) of the Immigration Act Chap. 18:01** by the Minister of National Security.
- c. An Order prohibiting the Chief Immigration Officer, her servants and/or agents from harassing or detaining the Claimants until the determination of the application for permanent residency of the Claimants by the Minister of National Security.
- d. An Order prohibiting the Chief Immigration Officer, her servants and/or agents from committing any acts that could render nugatory the exercise of the discretion of the Minister of National Security in relation to the pending application of the Claimants for permanent residency.

- e. An Order of certiorari staying the expiration of the Orders of Supervision of the Chief Immigration Officer pending the determination of the application of the Claimants by the Minister of National Security.
- f. The Defendant shall pay to the Claimants the costs of the claim to be assessed by a Registrar in default of agreement.

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Eleanor Joye Donaldson-Honeywell

Judge