

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2018-01749

BETWEEN

ANNA GONZALEZ

Applicant/Intended Claimant

AND

THE MINISTER OF NATIONAL SECURITY

Respondent/Intended Defendant

Before the Honourable Madame Justice Quinlan-Williams

Date of Delivery: February 4, 2019

Appearances: Mr. Devon Williams instructed by Ms. Laurissa Mollenthiel for the Applicant/Intended Claimant
Ms. Kelisha Bello instructed by Ms. Anala Mohan and Ms. Nisa Simmons for the Respondent/Intended Defendant

**DECISION ON THE APPLICANT/INTENDED CLAIMANT'S APPLICATION FOR
LEAVE OF THE COURT TO APPLY FOR JUDICIAL REVIEW**

1) The Applicant/Intended Claimant ("Ms. Gonzalez") is a Venezuelan national. Ms. Gonzalez has applied for several Minister's Permits. The last

of her four applications was denied via letter dated 15th February 2018 on the ground that it was revealed that she fell within the prohibited class. The Applicant/Intended Claimant contends that this was a well-known fact as the past three Minister's Permits issued to her referred to the deportation order; the basis of her classification within the prohibited class. The Applicant/Intended Claimant further contends that neither the fact that a person has been issued a deportation order or is a member of the prohibited class is sufficient reason for the denial of a Minister's Permit especially in the circumstances where it was previously granted.

- 2) Ms. Gonzalez filed a notice of application on the 15th May 2018 pleading with the court for the following reliefs and remedies:
- i. An interim order that the deportation order dated 10 March 2011 be stayed until the determination of the substantive judicial review proceedings;
 - ii. An interim order that the Chief Immigration Officer place the Applicant/Intended Claimant on a further Order of Supervision pending the determination of the substantive judicial review proceedings;
 - iii. An order of certiorari to remove into this Honourable Court and quash the decision of the Respondent/Intended Defendant made on the 15th February 2018 to deny the Applicant/Intended Claimant's application for a Minister's Permit;
 - iv. A declaration that the decision of the Respondent/Intended Defendant, made on the 15th February 2018 to deny the Applicant/Intended Claimant's application for a Minister's Permit breached the principles of natural justice as the Respondent/Intended Defendant failed to provide adequate reasons explaining the decision or providing such particulars to the Applicant so as to enable the Applicant/Intended Claimant to know the issues and considerations to which the

Respondent/Intended Defendant addressed its mind to and that it acted lawfully;

- v. A declaration that the decision of the Respondent/Intended Defendant made on the 15th February 2018 to deny the Applicant/Intended Claimant's application for a Minister's Permit was unreasonable and/or irregular and/or an improper exercise of his/her discretion;
- vi. An order of mandamus requiring the Respondent/Intended Defendant to provide adequate reasons to the Applicant/Intended Claimant and/or requiring the Respondent/Intended Defendant to reconsider the decision taking into consideration and giving due weight to the facts and considerations raised in the Applicant/Intended Claimant's application for a Minister's Permit dated 14 December 2017;
- vii. That the cost of this application be borne by the Respondent/Intended Defendant; and
- viii. Such further other orders, directions or writs as the Court considers just and as the circumstances of this case warrant pursuant to Section 8(1) (d) of the Judicial Review Act Chapter 7:08.

Issues

- 3) Based on the application, the affidavit that supports it and the reliefs sought the court has determined that the issues for the court's determination, at this stage, are whether the Applicant/Intended Claimant has a realistic prospect of success in:
- i) causing the Respondent/Intended Defendant to provide reasons or adequate reasons for the refusal of the Minister's Permit;
 - ii) declaring that the Minister's decision in refusing to grant a Minister's Permit is unlawful; and

- iii) mandating the Minister to reconsider the Applicant/Intended Claimant's application for the grant of a Minister's Permit.
- 4) Based on the historical relationship between the Applicant/Intended Claimant and the Respondent/Intended Defendant, the status of the Applicant/Intended Claimant as a member of the prohibited class and that the Applicant/Intended Claimant's residency status is unalterable by any action or decision within the Minister's remit, the court is satisfied on a balance of probabilities that the Applicant/Intended Claimant does not have a realistic prospect of success.
- 5) Leave of the Court is not granted to the Applicant/Intended Claimant to apply for judicial review.

The Applicant/Intended Claimant's Case

- 6) On the 8th February 2011, the Applicant/Intended Claimant was convicted at the Arima Magistrates' Court for three offences. All the offences occurred on the 9th January 2011 when the Applicant/Intended Claimant presented herself to an Immigration Officer at the Piarco International Airport from an incoming flight from Venezuela. The Applicant/Intended Claimant was convicted for the offence of possession of a fraudulent Venezuelan passport, uttering a forged Venezuelan passport and uttering a forged Trinidad and Tobago work permit. For these offences the Applicant/Intended Claimant was sentenced to pay fines of Two Thousand Dollars (\$2000.00), Five Thousand Dollars (\$5000.00) and Two Thousand Dollars (\$2000.00) respectively. The result of these conviction meant that the Applicant/Intended Claimant joined a class of persons known as a prohibited class.
- 7) The day after the convictions were recorded, the 9th February 2011, the Minister of National Security ("the Minister") wrote to the Chief Immigration Officer requesting that the Applicant/Intended Claimant be

placed on an order of supervision. The order of supervision was granted on the 10th February 2011. The purpose of this order of supervision was to allow her to stay and assist the Police in their investigations. The order of supervision was further extended to the 9th April 2011.

- 8) On or about the 5th April 2011 the Applicant/Intended Claimant was informed by Immigration Officials that she would be issued a deportation order. On the 8th April 2011 the Applicant/Intended Claimant was served with the said order of deportation. She claimed she was coerced to sign same without a Special Inquiry, legal advice or a translator. Ms. Gonzalez then visited the Venezuelan Embassy, obtained her travel documents and returned to Venezuela.
- 9) It is the Applicant/Intended Claimant's case that despite her deportation order and being a member of the prohibited class, she was granted several Minister's Permits: on the 18th November 2011 she was granted Minister's Permit 103/11 and again on the 18th November 2013 she was granted Minister Permit 32/13. Both Minister's Permits stated: "MRS. ANA FLORIANNYS GONZALEZ SOTILLO... to enter and remain in Trinidad and Tobago as a household member... to pursue an application for a Presidential Pardon to facilitate the processing of her application for Permanent Residence."
- 10) The Applicant/Intended Claimant's then husband Mr. Reynold Claudie, applied for a Presidential Pardon on her behalf on or about the 29 October 2011. However, she was subsequently advised, on the 6th February 2012, that same was denied. One year later, on the 27th February 2013 the Applicant/Intended Claimant submitted another application for Presidential Pardon. There is no evidence before the court as to the status of this application.

11) In 2013, the Applicant/Intended Claimant's marriage to Mr. Reynold Claudie was dissolved and a decree absolute was granted. On the 3rd April 2013, Mr. Reynold Claudie wrote to the Minister of National Security indicating that he would no longer be supporting the Applicant/Intended Claimant's application for permanent residence. Following which, the Minister's Permit was cancelled. Despite this event, on the 9th July 2015 the Minister of National Security again issued and/or extended the Applicant/Intended Claimant's Minister's Permit 63/15.

12) On the 24 March 2017 Ms. Gonzalez married another national of Trinidad and Tobago, Mr. Zaheer Khan. Ms. Gonzalez avers "I would very much like to apply for permanent residence and a work permit as I am the lawful wife and mother of Trinidadian Nationals."¹ In pursuit of that desire, the Applicant/Intended Claimant, on the 14th December 2017, applied for another Minister's Permit. Via letter dated 15th February 2018 the Applicant/Intended Claimant received a response from the Permanent Secretary of the Respondent/Intended Defendant refusing the application and stating "it was revealed that Ms. Sotillo falls within the prohibited class". It is the Applicant/Intended Claimant's case that this was a well-known fact as the past three Minister's Permits issued to her referred to the deportation order.

13) As a result, The Applicant/Intended Claimant caused her attorneys-at-law to write to the Ministry of National Security on the 16th April 2018 and on the 30th April 2018 expressing their concerns and requesting further particulars and clarification as to the reasons for the decision pursuant to section 16 of the Judicial Review Act Chapter 7:08. To date no reasons have been provided.

The Respondent/Intended Defendant's Case

¹ Affidavit of Applicant/Intended Claimant, paragraph 21.

14) Applicant/Intended Claimant came to the attention of the Immigration Division on the 9th January 2011 when she entered Trinidad and Tobago at the Piarco International Airport presenting Venezuelan Passport #35015154 bearing Work Permit No. 3191/2010. There is no dispute between the Applicant/Intended Claimant and the Respondent/Intended Defendant with respect to the events that followed, including the conviction and sentence, Order of Deportation made on the 9th of February 2011, the grant of Minister's Permits and up to the refusal of a Minister's Permit on 15th February 2018.

The Law and Analysis

15) The Applicant/Intended Claimant submits that she is well within the time period to file an application for judicial review pursuant to section 11² of the Judicial Review Act Chapter 7:08. By letter dated the 15th February 2018 the Applicant/Intended Claimant was informed of the decision refusing her application for a Minister's Permit. On the 16th April 2018 and 30th April 2018, the Applicant/Intended Claimant wrote to the Respondent/Intended Defendant asking for reasons. No reasons or response was provided. Consequently, the Applicant/Intended Claimant filed the application for judicial review on the 15th May 2018 which is within the three (3) month period from when the grounds for the application first arose.

16) The Civil Proceedings Rules ("CPR") part 56.3(1) provides:

“(1) No application for judicial review may be made unless the court gives leave.”

This application, has accorded with the requirements of the CPR. The application is for leave to apply for judicial review.

² 11. (1) An application for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.

17) Section 9 of the Judicial Review Act Chapter 7:08 (“JRA”) states:

“The Court shall not grant leave to an applicant for judicial review of a decision where any other written law provides an alternative procedure to question, review or appeal that decision, save in exceptional circumstances.”

18) *Matalulu v Director of Public Prosecutions* [2003] 4 LRC 712, 733 sets out the requisite standard the Applicant/Intended Claimant’s case must meet when requesting leave for judicial review:

“It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to ‘justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen.’”

19) The test for granting leave for judicial review was applied in the judgment of *Sharma v Browne-Antoine and ors.* [2007] UKPC 57 at page 63:

“The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: *R v Legal Aid Board, Ex p Hughes* (1992) 5 Admin LR 623, 628; Fordham, *Judicial Review Handbook*, 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application...”

20) With respect to the discretionary bar of an alternative remedy, the Applicant/Intended Claimant avers that there is no alternative remedy available to her as it relates to the Minister’s decision refusing the Minister’s Permit. She claims that there is no appeal mechanism to that decision. The Respondent/Intended Defendant however contends that there were indeed other remedies that could have been exhausted namely: appeal of the deportation order, seeking to have the Special Inquiry re-opened and the application for a Minister’s Permit.

21) The court agrees with the submission made by the Applicant/Intended Claimant’s case that she is not seeking to review the deportation order made against her on the 10th March 2011. While it is acknowledged that

she applied for an interim order for a stay of the deportation order in these proceedings, this is not the crux of the application. Ms. Gonzalez contends that the application is not to appeal the deportation order but to enable her to attend this matter currently before the High Court and to secure her attendance, thereby preventing the proceedings from being frustrated. As a result, the court is satisfied that the appeal of the deportation order is not an alternative remedy.

22) The Respondent/Intended Defendant submitted that the remedy in section 26 of the Immigration Act Chapter 18:01 was also available to Ms. Gonzalez which prescribes:

“An inquiry may be re-opened for the hearing and receiving of additional evidence or testimony by Order of the Minister or at the instance of the Special Inquiry Officer who presided at such inquiry, or by any other Special Inquiry Officer acting upon the directive of the Chief Immigration Officer; and the Special Inquiry Officer concerned may confirm, amend or reverse the decision previously given.”

23) A Special Inquiry can be re-opened. However, the court is in agreement with the Applicant/Intended Claimant that these proceedings do not seek to challenge the findings of the Special Inquiry or the process it employed to issue the deportation order. What the Applicant/Intended Claimant is seeking in these proceedings is clarity and reasons for the Respondent/Intended Defendant’s decision to refuse her latest application for a Minister’s Permit. These proceedings do not involve the Special Inquiry completed on the 10th March 2011 in which the deportation order was made. Therefore, the re-opening of the Special Inquiry into the granting of the deportation order is not a suitable alternative remedy to judicial review in these circumstances.

- 24) Finally, the Respondent/Intended Defendant proposed that Ms. Gonzalez applied for a Minister's Permit pursuant to section 10³ of the Immigration Act Chapter 18:01 to cancel the deportation order since it is an offence to remain in Trinidad and Tobago without one. This is obviously not an alternative remedy.
- 25) The Applicant/Intended Claimant asserts that she does have a realistic prospect of success as her case is hinged on three points. Namely, that the Minister's refusal to grant the Minister's Permit (i) frustrated the purpose of the Immigration Act Chapter 18:01; (ii) breached the rules of natural justice; and in so doing the Respondent/Intended Defendant is (iii) under a duty to give reasons, because prima facie she contends that the Minister's decision was irregular and an improper exercise of his discretion.
- 26) (i) Frustrating the purpose of the Immigration Act Chapter 18:01- Section 10 of the Act confers upon the Minister a discretion to issue a written permit authorising any person to enter or remain in Trinidad and Tobago for a period not exceeding twelve (12) months. Such a permit also has the effect of staying any deportation order in force. Therefore, the Act contemplates, and is the mechanism by which a person who is or has become a member of the prohibited class⁴ and has been ordered deported can remain in or enter Trinidad and Tobago subject to the conditions imposed by the Minister.
- 27) As a result, the Applicant/Intended Claimant avers that the Minister's refusal to grant the Minister's Permit for the sole reason that she is a

³ 10(1) The Minister may issue a written permit authorising any person to enter Trinidad and Tobago or, being in Trinidad and Tobago, to remain therein.

(2) A permit shall be expressed to be in force for a specified period not exceeding twelve months, and during the time that it is in force such permit stays the execution of any deportation order that may have been made against the person concerned.

⁴ 8. (1) Except as provided in subsection (2), entry into Trinidad and Tobago of the persons described in this subsection, other than citizens and, subject to section 7(2), residents, is prohibited, namely— (d) persons who have been convicted of or admit having committed any crime, which if committed in Trinidad and Tobago would be punishable with imprisonment for one or more years;

member of the prohibited class is unreasonable as it frustrates the purpose of the Immigration Act Chapter 18:01. In support, she relied on the case of *Padfield v Minister of Agriculture and Fisheries and Food House of Lords* [1968] 1 All ER 694. The House of Lords stressed that where a statute conferred a discretion on the powers of a Minister, did not expressly limit or define the extent of his discretion and did not require him to give reasons for declining to exercise the power, his discretion is limited to the extent that it does not frustrate the objects of the statute which conferred it. Their Lordships in that case criticized the Minister as they found that apart from not fully considering the applicant's complaint, the reasons given in support of his rejecting decision were not good reasons in law. Even though he was not under any duty to provide reasons, the reasons he did provide were still to be assessed for its lawfulness.

28) The Applicant/Intended Claimant submits that the reason for denying the application for a Minister's Permit frustrates the purpose of the Immigration Act Chapter 18:01 and as such it is not a good reason in law. Furthermore, the reason provided appears to be arbitrary, indicative of a decision grounded on simple preference or prejudice as opposed to foreseeability, reasonableness and the imperatives of justice on the fundamental principles of equality and non-discrimination.

29) In response, the Respondent/Intended Defendant relied on the authority of *Mohanlal Bhagwandeem v The Attorney General of Trinidad and Tobago* [2004] UKPC 21 which provides that there is a presumption of regularity in the functions of public officials. There must be cogent evidence in the form of mala fides to disprove the presumption:

“**[20]** The proposition that to establish a case of discrimination by a public official it is necessary to prove mala fides on his part appears in several cases in the courts of Trinidad and Tobago, notably the judgment at first instance in *Smith v LJ Williams Ltd* (1980) 32 WIR 395 and that of the Court of Appeal in *Attorney-General v KC Confectionery Ltd* (1985) 34 WIR 387. In the former case Bernard J considered Indian and US authorities and stated (at p 411):

'In so far as official acts are concerned, the nub of the matter is, in my view, that the section both guarantees and is intended to ensure that where parties are similarly placed under the law they are entitled to like treatment under that law. However, there is a presumption of regularity in the acts and conducts of officials. Consequently, the burden of proof is upon the aggrieved party to establish mala fides in the administration of the enactment.'

In *Attorney-General v KC Confectionery Ltd* the Court of Appeal adopted a similar approach, accepting as correct the propositions that there is a presumption of regularity in the acts of officials and that it is necessary to show a clear and intentional discrimination when a claimant alleges unequal treatment at the hands of a public official or authority. Bernard JA (as he had then become) said (at p 415):

'Having held that the presumption of regularity in the acts of public officials exists in this jurisdiction, I entertain the view that it can only be discharged by proof of mala fides on a balance of probability.'"

30) Ms. Gonzalez maintained that her application for judicial review is not to question the Minister's power. She is not alleging discrimination on the Minister's part during the Special Inquiry process or during the process of reviewing her application for the Minister's Permit; neither does she seek to assess the merits of the decision based on the facts. The purpose of these proceedings is to grant leave for the Respondent/Intended Defendant to provide clarity as to the decision making process, in efforts of ascertaining whether or not the decision maker has complied with the tenets of fairness, natural justice and the duty to give reasons.

31) As stated in *Sharma* [supra] arguability cannot be judged without reference to the nature and gravity of the issue to be argued. The Applicant/Intended Claimant has made it clear that the real nature of her application is for her to pursue her application to become a resident. The Section 6 of the Immigration Act Chapter 18:01 has set the criteria for persons who may be

permitted to become residents of Trinidad and Tobago. Section 6 of the Immigration Act states, *inter alia*:

“(2) In determining the suitability of an applicant for the grant of resident status under this section, the Minister shall be satisfied, *inter alia*, that the applicant-

- (a) had entered the country legally;
- (b) is not in a prohibited class; and
- (c) is of good character as evidenced by a police certificate of good character.”

32) The Applicant/Intended Claimant has averred that her former husband, Mr. Reynold Claudie, made an application to the President for a pardon on the 29th October 2011. By letter dated 6th February 2012, the Applicant/Intended Claimant was informed that her application for a President’s pardon was not recommended. The Minister’s Permit of the 18th March 2013 was issued for the purpose of allowing the Applicant/Intended Claimant an opportunity to pursue a Presidential Pardon to facilitate the process of her application for Permanent Residence. This permit was valid to the 4th of March, 2014.

33) The Applicant/Intended Claimant averred at paragraph 15 of her affidavit, that she submitted another application for a Presidential Pardon. She also averred that by letter dated the 1st March 2013 she was told, presumably by the pardon committee, that she needed to submit further documents. The Applicant/Intended Claimant has provided no proof of these assertions, no indication of the additional documents she was required to provide nor the current status of her new application for a Presidential Pardon.

34) In the application for a Minister’s Permit, the Applicant/Intended Claimant’s attorneys, acting on her behalf, stated that the permit was required, *inter alia*, “so that she can pursue her application for the Presidential Pardon, her application for residence and attend to her matter in the High Court relating to custody of her Trinidadian son”.

35) Based on the current state of the immigration law, the Applicant/Intended Claimant can never qualify as a person who may be permitted to become a resident. The court has already determined, her desire to become a resident, to be the true nature of her application. How then should the court view the letter written to the Applicant/Intended Claimant dated the 15th February 2018?

36) It must be remembered that this letter responds to the Applicant/Intended Claimant's application to be granted a Minister's Permit. That letter of the 14th December 2017, recounts in detail the history of the Applicant/Intended Claimant and how she came to be making such an application. The history dates from 2009 when the Applicant/Intended Claimant married a citizen of Trinidad and Tobago. It further recounts the difficult position that the Applicant/Intended Claimant is in due to the order of supervision and the deportation order that were issued against her following her convictions. The Applicant/Intended Claimant's prayer was for a Minister's Permit pursuant to section 10(1) of the Immigration Act Chapter 18:01. This section states:

"10. (1) The Minister may issue a written permit authorising any person to enter Trinidad and Tobago or, being in Trinidad and Tobago, to remain therein.

(2) A permit shall be expressed to be in force for a specified period not exceeding twelve months, and during the time that it is in force such permit stays the execution of any deportation order that may have been made against the person concerned.

(3) Subject to subsection (4) and without prejudice to the generality of his powers under this section, the Minister may issue a permit to the following persons to enter Trinidad and Tobago or being in Trinidad and Tobago to remain therein, that is to say:

(a) persons such as are described in section 8(1) (a) or (b) if satisfied that such persons are—

- (i) unlikely to become charges on public funds; or
- (ii) members of a family in Trinidad and Tobago and the family of such persons their becoming charges on public funds, and that, except in the case of persons described in section 8(1) (a) in respect of whom as is mentioned in paragraph (ii) satisfactory security is given, the Minister responsible for Health has agreed to their treatment and care at any health resort, hospital, sanatorium,

asylum or other place or institution in Trinidad and Tobago;

(b) persons such as are described in section 8(1)(i) if satisfied that such persons have ceased to be members of or associated with such organisations, groups or bodies and that the entry of such persons would not be detrimental to the security of Trinidad and Tobago.

(4) The Minister may attach to the entry or remaining in Trinidad and Tobago of such persons such terms and conditions as he may think fit, and if any person to whom a permit has been granted under subsection (3), contravenes any such term or condition, the Minister may cancel such permit.

(5) The Minister may, at any time in writing, extend, vary or cancel a permit.

(6) The Minister may, upon the cancellation or expiration of a permit, make a deportation order respecting the person concerned and such person shall have no right of appeal from the deportation order and shall be deported as soon as practicable.”

37) There are important observations about the Minister’s legal authority to issue Minister’s Permits. The first observation is that the Minister is under no obligation to issue a Minister’s Permit; he may issue one. The second observation is that the Minister’s Permit shall be issued for a specified period, not to exceed one year. The third observation is that the Minister may issue conditions when he issues a Minister’s Permit. Fourth observation is that following the expiration or cancellation of a Minister’s Permit, a deportation order may be issued and there shall be no appeal against such a deportation order. The final observation is that the Minister is not mandated to give reasons for his decision.

38) In the court’s opinion it seems obvious that the Minister’s Permit is intended to be a short term measure to either allow a person, who would not have been permitted to enter or to remain in Trinidad and Tobago. It also appears that the Minister’s Permit should be issued for a considered purpose. The Applicant/Intended Claimant’s Minister’s Permits were all issued for fixed periods. It also appears, from the section, that the Minister’s Permits should be issued to allow an otherwise prohibited person to enter or remain in Trinidad and Tobago.

- 39) The first Minister's Permit was issued for one year. It was issued for two purposes, to permit the Applicant/Intended Claimant to assist the police in ongoing investigations – no doubt with respect to the offences for which she had pleaded guilty. The second purpose was to allow her an opportunity to pursue an application for a Presidential Pardon to facilitate the processing of her application for Permanent Residence. This Minister's Permit was valid until 20th November 2012. Before this permit had been granted, the Applicant/Intended Claimant had in fact applied for a Presidential Pardon.
- 40) The second Minister's Permit was dated the 18th March 2013 and it was valid until the 4th March 2014. This Minister's Permit was granted to allow the Applicant/Intended Claimant the opportunity to pursue an application for the President's Pardon and to facilitate the progression of her application for permanent residence. Less than one month later, the Minister's Permit was cancelled as the Applicant/Intended Claimant's former husband notified the Minister that he was no longer supporting her application for a President's Pardon and for residency in Trinidad and Tobago.
- 41) The third Minister's Permit was issued for a period of about a month and a half – from 9th July 2015 to the 31st August 2015. The permit was granted for the Applicant/Intended Claimant to remain in the care of Reynold Claudie. By that time the Applicant/Intended Claimant's marriage to Mr. Reynold Claudie had broken down and she was in a relationship with Mr. Zaheer Khan. According to the Applicant/Intended Claimant the purpose for this Minister's Permit was for her to attend urgent family business in Venezuela.
- 42) The House of Lords decision in *Padfield* [supra] is distinguishable when considered in the context in which it was made. The recommendations made in *Padfield* [supra] supported and suggested that the milk farmers

were due for an increase in price. Therefore the context suggest that the decision ran contra to what, ordinarily, should have been expected. In those circumstances the explanation provided was deficient. Here the context supports the decision made by the Minister. A Minister's Permit is not related to nor does it enlarge the jurisdiction that the Minister has when dealing with residency applications.

43) With respect to the Applicant/Intended Claimant's proof of mala fides, the court finds that in these circumstances it is not necessary to prove same. The crux of Applicant/Intended Claimant's application for judicial review is to determine the actual reason for the Minister's decision, i.e. whether or not mala fides was an element of the decision. As aforementioned, her case does not allege that the Minister was discriminatory against her in his decision. What the Applicant/Intended Claimant is seeking is clarity in respect of the Minister's decision. Therefore, the presumption of regularity applies.

44) (ii) Rules of Natural Justice- The rules of natural justice is a fundamental principle that has to be applied in all decisions by any administrative body or tribunal. The fundamental touchstone of natural justice is the attainment of fairness. Procedural fairness is not subject to rigid rules but the context of the duty depends on the circumstances and particular function of the case in question⁵.

45) The judgment of Lord Mustill in *R v Secretary of State for the Home Department, ex parte [Doody]* [1994] 1 AC 531 at 560 stipulated that where an Act of Parliament confers an administrative power, there is a presumption that it will be exercised in a manner which is fair in all the circumstances. The standards of fairness are dynamic. Its application depends on the context of the decision, with a consideration of all factors

⁵ Michael Fordham in the Judicial Review Handbook 4th Edition paragraph 60.2 page 1007

influencing the said decision. Lord Mustill further opined that an essential feature of the context is, the statute which creates the discretion as it relates to both its language, and the shape of the legal and administrative system within which the decision is taken. Fairness also allows the person being adversely affected to make representations either before or after the decision. Usually the person affected cannot make worthwhile representations without knowing what factors may weigh against his interests of fairness. In these circumstances the Applicant/Intended Claimant had a history of making representations and in fact submitted a detail representation when applying for the latest Minister's Permit. The court is satisfied that the Applicant/Intended Claimant, cannot in these circumstances successfully claim that the Minister was not fair to her in the decision and the reason provided.

46) The Applicant/Intended Claimant's evidence is that she would be adversely affected if she is forced to leave Trinidad and Tobago. She is currently the lawful wife and mother of Trinidadian nationals and she has two children, one of which is a Trinidadian national. If she is deported, her son with Mr. Reynold Claudie will be deprived of knowing one of his parents, also frustrating the order of Mr. Justice R. Mohammed as it relates to the care and control of her son. In addition, the economic and political crisis in Venezuela would make it extremely difficult to care for her children were she to be deported. Those are circumstances that may have more weight and given greater consideration in another or other types of applications. In this application as it relates to the Minister's Permit and the exercise of that discretion and the reasons provided, unfortunately the weight of those factors are limited.

47) The Applicant/Intended Claimant's case is that based on the reason provided by the Minister, she is left in the dark as to what matters they considered in denying her application and as to whether the decision was

indeed lawfully made. The court disagrees with this submission based on the context and circumstances here.

48) Based on the aforementioned guidance on procedural fairness, the court agrees that the application of fairness is flexible all dependent on the context and nature of the circumstances. In this case, the Applicant/Intended Claimant is asking the Minister to enlighten her as to the factors which weighed against her so that she has a case to answer. The court must also be minded and guard against making orders that would cause or encourage persons, charged with administrative duties, from belatedly making up reasons. By the affidavit provided by the Respondent/Intended Defendant it is clear that the reason for the refusal is that the Applicant/Intended Claimant is and remains a member of the prohibited class of persons who has not been granted a Presidential Pardon. However artfully stated, with any amount of additional words, it appears to the court that that is the only explanation available. It is an explanation that the Applicant/Intended Claimant has today.

49) (iii) Duty to provide reasons- Section 16 of the JRA states:

“16. (1) Where a person is adversely affected by a decision to which this Act applies, he may request from the decision-maker a statement of the reasons for the decision.

(2) Where a person makes a request under subsection (1), he shall make the request—

(a) on the date of the giving of the decision or of the notification to him thereof; or

(b) within twenty-eight clear days after that date, whichever is later, and in writing.

(3) Where the decision-maker fails to comply with a request under subsection (1), the Court may, upon granting leave under section 5 or 6, make an order to compel such compliance upon such terms and conditions as it thinks just.”

50) There is no general duty to give reasons for every administrative decision.

However, the courts have increasingly imposed the duty in appropriate

circumstances where fairness demands⁶. Even where the statute is silent as to the provision of reasons, it does not preclude the courts from imposing such a requirement as it enables the parties to know the issues to which it addressed its mind and that it acted lawfully⁷.

51) There is now a greater trend in favour of transparency in the decision making process concretising the need for reasons. In *R v Lambeth LBC, Ex Parte Walther Sir Louis Blom-Cooper QC* [1993] Times, 6 October page 2 asserts:

“It seems to me that English law has now arrived at the point where there is at least a general duty to give reasons whenever the statutorily impregnated administrative process is infused with the concept of fair treatment to those potentially affected by administrative action. It was hard to envisage any situation, except possibly where the giving of reasons would reveal some aspect of national security or unintentionally disclose confidential information or invade privacy. In many cases, exceptions to the duty to give reasons might be regarded as justifying more limited forms of reasons, rather than an absence of any duty to give reasons.”

52) Similarly, the Irish Supreme Court in the case of *Mallak v Minister for Justice, Equality and Law Reform* [2012] IESC 59 held at paragraph 74:

“ ... The developing jurisprudence of our own courts provides compelling evidence that, at this point, it must be unusual for a decision maker to be permitted to refuse to give reasons. The reason is obvious. In the absence of any reasons, it is simply not possible for an applicant to make a judgment as to whether he has a ground for applying for judicial review of the substance of the decision and, for the same reason, for the court to exercise its power.”

53) The court is satisfied that the Minister may be under a duty to provide reasons, based on the tenets of fairness, when he refuses to issue a Minister's Permit. This is although the Immigration Act Chapter 18:01 does

⁶ *R v Secretary of the State for the Home Department Ex Parte Doody* [1994] 1 AC 531

⁷ *R v Civil Service Appeal Board Ex Parte Cunningham* [1991] 4 All ER 310 per Lord Donaldson MR

not expressly require such. It is noted that on the 16th and 30th of April 2018 the Applicant/Intended Claimant wrote to the Minister requesting reasons although past the twenty-eight (28) day deadline⁸ as prescribed by section 16 of the JRA. Certainly the Minister could have responded to those letters. However, Ms. Gonzalez's mind does not need addressing as to what factors were considered when arriving at the Minister's decision to refuse her latest application. Ms. Gonzalez is aware of the factors.

54) Additionally, the Applicant/Intended Claimant's view is that the reasons provided by the Respondent/Intended Defendant must be adequate. The Court of Appeal in *R v Westminster City Council, Ex parte Ermakov* [1996] 2 All ER 302 at page 9 stated the standard of the reasons to be provided:

"It is well established that an obligation, whether statutory or otherwise, to give reasons for a decision is imposed so that the persons affected by the decision may know why they have won or lost and, in particular, may be able to judge whether the decision is valid and therefore unchallengeable, or invalid and therefore open to challenge. There are numerous authoritative statements to this effect: see eg *Thornton v Kirklees Metropolitan BC* [1979] 2 All ER 349 at 354, [1979] QB 626 at 638 per Megaw LJ and *R v Croydon London Borough, ex p Graham* (1993) 26 HLR 286 at 291–292 (a case to which further reference will be made), where Sir Thomas Bingham MR said—

'I readily accept that these difficult decisions are decisions for the housing authority and certainly a pedantic exegesis of letters of this kind would be inappropriate. There is, nonetheless, an obligation under the [Housing Act 1985] to give reasons and that must impose on the council a duty to give reasons which are intelligible and which convey to the applicant the reasons why the application has been rejected in such a way that if they disclose an error of reasoning the applicant may take such steps as may be indicated.'

⁸ Being twenty-eight clear days after the decision to refuse her application for a Minister's Permit dated 15th February 2018

55) That three prior applications were granted, in the circumstances and for the stated purposes is the best insight that the Applicant/Intended Claimant can have for the Minister's decision. These were granted with the knowledge that she was a member of the prohibited class and she was pursuing a Presidential Pardon to lift the deportation order. Her circumstances have changed. She was refused a Presidential Pardon. Further her former husband had written withdrawing his support for her application. There is no evidence that her current husband had written supporting her application.

56) Therefore, the court is satisfied that the Applicant/Intended Claimant did not need to be informed, any more clearly or with any greater specificity the reason or reasons for the denying of the Minister's Permit. She could not have been left in ignorance and/or confusion.

57) The Applicant/Intended Claimant avers that she has established a family in Trinidad and Tobago and if deported her pursuit of the Presidential Pardon and efforts of obtaining residency might indeed become exponentially difficult. However, these factors, as real and as emotionally distressing to the Applicant/Intended Claimant, do not in this instance, enlarge the Minister's jurisdiction as it related to the real issue, the Applicant/Intended Claimant's desire to apply for residency.

58) Finally, the Respondent/Intended Defendant raised section 30 of the Immigration Act Chapter 18:01. Section 30 ousts the jurisdiction of the court as is relates to decisions of the Minister relating to the detention or deportation of persons:

"30. Subject to section 31(3) no Court has jurisdiction to review, quash, reverse, restrain or otherwise interfere with any proceeding, decision or Order of the Minister, the Chief Immigration Officer, a Special Inquiry Officer or an immigration officer had, made or given under the authority of and in accordance with this Act relating to the detention or deportation of any person, upon any ground whatsoever,

unless such person is a citizen of Trinidad and Tobago or is a resident.”

59) In *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, it was decided that any error of law made by a public body will make its decision a nullity and an ouster clause does not deprive courts of jurisdiction in Judicial Review proceedings. In the case of *Aviation Communication and Allied Workers Union v The Registration Recognition and Certification Board* CA. No. 35 of 1995 the learned Justice of Appeal Ibrahim commented on the circumstances under which the court’s intervention is appropriate when its jurisdiction is ousted:

“Once, therefore, it is a matter that falls within the functions and responsibilities of the Board then the Board can interpret and apply the Act in any way it thinks fit in relation to those functions and responsibilities. It may do so correctly or incorrectly and, if correctly, it is immune from being put right by any court. If, however, the error made does affect the jurisdiction of the Board then it may be put right, as for example, if it seeks to deal with a matter outside its functions and responsibilities. (*South East Asia Fire Bricks Sdn Bhd v. Non Metallising Mineral Products Manufacturing Employees Union and others* [1980] 2 All ER 689).

Also, if it violates the rules of natural justice as for example, if it makes orders against a party without hearing that party or if some of its members had a real interest in the matter before it.”

60) As noted earlier, the Applicant/Intended Claimant’s application for leave does not concern any decision relating to detention or deportation. Therefore Section 30 and the principles on ouster clauses is not applicable.

61) On the issue of costs, this usually follows the victor. However the court does have a discretion, in certain circumstances to depart from the usual. In particular, the court considered the architecture for Pre-action Protocol letters. The court also considered the response of the Respondent/Intended Defendant seeking an extension of time for 90 days when it must have been pellucid that the Applicant/Intended Claimant did

not have that time to give. The court also considered the Respondent/Intended Defendant's lack of responses to the other letters sent by the Applicant/Intended Claimant. It is possible that a response to those letters, or anyone of them, could have forestalled this application for leave.

62) Consequently the court orders that the Respondent/Intended Defendant is to pay part of the Applicant/Intended Claimant's costs as follows:

For Instructions	\$1750.00
For Drafting Application	\$1450.00
For First Appearance	\$2150.00
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Total	\$5350.00

63) At the conclusion of delivering the court's decision, the Respondent/Intended Defendant gave notice of their intention to appeal the Court's costs order.

Justice Avason Quinlan-Williams

JRC: Romela Ramberran