THE IMMIGRATION APPEAL TRIBUNAL

IN THE MATTER OF THE BERMUDA IMMIGRATION AND PROTECTION ACT 1956

AND IN THE MATTER OF A SPECIAL HEARING TO CONSIDER THE JURISDICTION OF THE IMMIGRATION APPEAL TRIBUNAL TO HEAR APPEALS RELATED TO WORK PERMITS

(Case No: 1 of 2013)

JURISDICTION RULING ON WORK PERMIT APPEALS

Jurisdiction Hearing Date: Tuesday, 23 April 2013

Counsel who appeared and or filed submissions for Appellants:
Mr David G Cooper, Cox Hallett Wilkinson Limited
Mr Peter J Farge, Farge & Associates
Ms Karen Lomas, Lomas & Co
Mr Larry D Mussenden, Mussenden Subair Limited
Mr Peter Sanderson, Wakefield Quin Limited
Mr Larry Scott, Scott & Scott
Mr Michael J Scott, Browne Scott

Minister's Representative who appeared:
Mr Steven Lambert, Assistant Chief Immigration Officer

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1. To protect the privacy interests of the appellants, I have not set out their names in this Ruling. They, however, will each be served with a copy of this decision. Waiting for the newly appointed

Immigration Appeal Tribunal ("the IAT") were some 19 outstanding appeals that related to work permit decisions made by the Minister's predecessor.

Procedural History

2. These appeals, some of which date back a number of years, have regrettably been in abeyance pending the drafting and legislative enactment of Rules needed to govern the practice and procedure of appeals. These Rules came into effect on 28 February 2013 and can be found on the Bermuda Law website.

3. In reviewing the appeal files related to work permits, it was not clear under which provision of the Bermuda Immigration and Protection Act 1956 ("the Act") the appeals were being brought and in particular, it was not clear whether the IAT had jurisdiction to hear such appeals, although the Immigration Department's standard form letter to prospective appellants stated that any appeal should be made to the IAT.

4. As Chairman of the IAT I thought it important that a decision needed to be made on whether the IAT has jurisdiction to hear work permit related appeals. Pursuant to my powers under section 13B (1) of the Act I appointed myself, Kiernan Bell (Deputy Chairman) and Delroy Duncan (IAT member) to hear all work permit related appeals as this was a preliminary issue of law and we are all senior litigation lawyers in our private practice and with some frequency have to consider whether a Judge, Magistrate or tribunal has jurisdiction to hear a particular case.

5. The IAT caused the attached letter, dated 22 March 2013, to be sent out to the appellants or their attorneys and the Minister's representative, and informed them that the IAT wished to be addressed on the question of jurisdiction. The procedure that was adopted gave all appellants an opportunity to be heard and to have the additional benefit of adopting the submissions of others including the submissions filed or made by various attorneys. The appellants and the Minister's representative were invited to file written submissions and to appear at a hearing scheduled for Tuesday, 23 April 2013 to make further submissions on whether the IAT had jurisdiction to hear work permit related appeals. If the IAT did not have jurisdiction, it would be operating outside of the law and any decision it might make would be of no force or effect. The IAT received helpful written submissions from Browne Scott dated 21 April 2013, Cox Hallett Wilkinson Limited dated 19 April 2013, Mussenden Subair Limited dated 16 April 2011 (two sets of submissions received), Wakefield Quin Limited dated 19 April 2013, Scott & Scott dated 10 April 2013 and Lomas & Co dated 9 May 2013. A number of unrepresented appellants attended the hearing but all chose to rely on the submissions made by the attorneys.

6. On the evening of 22 April 2013 the Minister notified the attorneys representing a number of the appellants that he would not be contesting their position that the IAT had jurisdiction to hear all work permit related appeals. However, while it is generally comforting when two parties to a dispute are able to arrive at an agreed position, on the legal question of jurisdiction

it is the Judge, Magistrate or in our case, the IAT who must be satisfied that there is jurisdiction to hear a particular matter.

7. On the morning of 23 April 2013 the IAT informed those in attendance at the hearing that notwithstanding the position of the Minister, the IAT needed to be satisfied that it had jurisdiction and the parties were invited to expand upon their written submissions which they did. The Minister's representative chose not to make submissions. Mr Larry Mussenden who had filed written submissions on behalf of a number of appellants was unable to attend in the morning (and I believe may have thought his attendance was not necessary in light of the Minister's position) but he was afforded a further opportunity to supplement his written submissions and to appear before the IAT at a later date. He was content to rely on the written submissions that he had filed.

The Law

8. To determine whether the IAT has jurisdiction to hear any particular appeal the starting point is section 124 (1) of the Act. Section 124 is set out below:

> 124(1) Without prejudice to anything in section 10, where a person is aggrieved by any decision of the Minister in respect of which an appeal is expressly allowed by any provision of this Act, he may, subject to the succeeding provisions of this section, within seven days of the service of any notice upon him communicating that decision to him, appeal to the Immigration Appeal Tribunal by notice in writing addressed to the Clerk of the Immigration Appeal Tribunal; and the Immigration Appeal Tribunal shall, subject as hereafter provided, determine any such appeal, and may make such order as appears to him just; and the Minister shall govern himself accordingly.

As can be seen a person who is aggrieved by any decision of the Minister may appeal that decision to the IAT provided (and these are the important words of the section) such an appeal *"is expressly allowed by any provision of this Act"*.

9. This requirement is repeated in section 13A which section establishes the IAT. It provides that the IAT has jurisdiction to *"hear and determine any appeal, expressly allowed to be made under this Act"*. The two sections tell us that not every decision made under the Act is going to be appealable to the IAT. No surprise there. The scope of the Act is very broad and the Minister may make a variety of decisions all the time, every day that affect people and it would be surprising and unworkable if each and every decision were appealable to the IAT. In obvious recognition of this fact the legislator has limited appeals to only those that are *expressly* permitted.

10. Black's Law Dictionary (8th ed) defines *"express"* as meaning *"clearly and unmistakably communicated."* So when a person wishes to appeal a decision of the Minister to the IAT he or she must go through the Act and find the section in the Act that says in regard to this particular

decision or type of decision of the Minister, an appeal can be made to the IAT. If such a section does not exist, there is no right of appeal.

11. In the area of Immigration, there are subject matters or topics that the Minister deals with all the time: Bermuda Status applications, Permanent Residency applications, work permit applications and renewals, residency applications; and there are revocations or restrictions of previous permissions given or grants made by the Minister. This is not a complete list but it sets out what occupies a considerable amount of the Minister's time. I will take each of these usual topics and see whether the Act gives a clear, unmistakable right of Appeal.

Part III of the Act: Acquisition and Enjoyment of Bermuda Status (sections 16 to 22)

12. This part of the Act sets out what requirements must be met before a person can apply for Bermuda Status and it sets out various sections that can be used to make an application for Status to the Minister. Part III also deals with the circumstances that can lead to the loss of Bermudian Status.

13. Section 19(1) allows a Commonwealth citizen of not less than 18 years of age, ordinarily resident in Bermuda for a period of 10 years immediately preceding his application and who has a qualifying Bermudian connection (defined by the legislation) to apply to the Minister for Bermudian Status. If the Minister turns down the application, section 19 (8) gives an express right of appeal. It uses crystal clear language: *"A person who is aggrieved by the Minister's rejection of his application under this section may, subject to section 124, appeal to the Immigration Appeal Tribunal against the rejection."*

14. Helpfully to the aggrieved person, section 19 (7) requires the Minister to inform the person of the rejection and of the person's right to appeal to the IAT.

15. Section 19(8) is the first time that an express appeal right is given for a particular type of Status application. In the world of legislative drafting, a draftsperson does not like to repeat himself. The next time a right of appeal is given; the draftsperson adopts or incorporates by reference Section 19 (8) which method of drafting I call "the adoption method".

16. Section 19A is the section of the Act which allows spouses of Bermudians to apply for the grant of Bermudian Status provided they meet residency requirements and have been married for 10 years. Now under this type of status application, it is a bit harder, particularly for a non-lawyer, to identify whether there is a section that gives an express right of appeal. It is only made harder because the person who has drafted the legislation has used legal speak rather than the language of ordinary people. Section 19A (6) states that *"subsections (3) and (5) of section 19 shall have effect mutatis mutandis in relation to applications under this section"*. Legal translation: Just as section 19 (8) gave an express right of appeal for certain Commonwealth citizens, spouses of Bermudians who have had their application turned down by the Minister also have an express right of appeal. *Mutatis mutandis* is not a character from the Lion King but

rather a two word (not one word as sometimes appears in the Act) Latin expression that translated means we are going to adopt the earlier stated process and we will do whatever is necessary to ensure that that process works here. This short cut adoption method is frequently used in the Act.

17. Section 20A (1) is the section that allows long-term residents under certain circumstances to apply to the Minister for Bermudian Status. Section 20A (2) uses the adoption method. It says *"Subsections (3) to (9) of section 19 shall have effect mutatis mutandis in relation to these applications".* Legal translation: Just as section 19(8) of the Act gave an express right of appeal, an applicant who has had their application under section 20A (1) rejected, also has an express right of appeal to the IAT.

18. You begin to get a feel for how this Act works. One section gives a clear, unambiguous right of appeal for a particular type of decision made by the Minister and other sections dealing with different but similar types of applications adopt by specific reference that right of appeal section.

19. There are three sections of Part III of the Act that I thought initially did not give any express right of appeal to the IAT. They are section 20D (1) (siblings of Bermudians applying for status); section 20E (1) (parents of Bermudians applying for status); and section 20F (non-Bermudian Parliamentary Electors applying for status). None of these sections specifically set out an appeal right and none of them use the adoption method (referencing back to the appeal process set out at section 19 (8) of the Act). I thought this absence of appeal rights rather peculiar. However, I found the appeal right under section 20C which references sections 20D to 20F. Section 20C (8) makes subsections (3) to (9) of section 19 applicable to such decisions (*mutatis mutandis*). Section 19(8) expressly allows a person to appeal to the IAT.

20. Section 22 (1) of the Act deals with the unusual circumstance where a person automatically ceases to possess Bermudian Status. There is no section which allows a person who has lost status in this way to appeal to the IAT and this is understandable because no decision has been made by the Minister.

21. Section 22 (3) of the Act allows the Minister to revoke grants of Status (given under sections 19, 19A, 20A or 20B (2)), where the status was obtained by means of fraud, false representation or concealment of material facts. Revocation of Status is a pretty serious matter. No surprise, section 22 (3A) (a) requires the Minister to notify the person of the revocation and of his right to appeal to the IAT. Section 22 (3A) (b) expressly states that if a person is affected by the Order he may, subject to section 124 of the Act, appeal to the IAT. Here the legislative draftsperson did not use what I described as the adoption method by referencing back to Section 19 (8) but he could have. He probably chose to set out the right of appeal in this way because we are no longer dealing with the application process but rather the revocation process. Also, revocation of any status is a particularly serious matter, and in those circumstances it is understandable that the legislative draftsperson expressed the right of appeal afresh.

Part IV of the Act: Control of Entry and Residence in Bermuda (sections 23 to 55)

22. This Part does not deal with work permits. Work permits are dealt with under Part V of the Act. Part IV does touch upon the right to work in certain cases (special category persons and holders of Permanent Residency certificates by way of example) but the focus of Part IV is on permission to be in Bermuda. Part IV primarily deals with the right or permissions needed to enter, stay and reside in Bermuda.

23. Under Section 25 (1) of the Act the Minister may grant permission or refuse to grant permission to anyone seeking to land in Bermuda, remain or reside in Bermuda. The section makes no reference to work which is governed by Part V. If you do not have permission from the Minister, landing, remaining or residing in Bermuda is considered unlawful. There are understandable exceptions: persons who possess Bermudian status; special category persons (those persons listed in the First Schedule of the Act such as public officers, employees of Her Majesty's Government stationed in Bermuda, crews of ships and aircraft frequenting Bermuda, scientists at the Biological Station, *bona fide* visitors and permanent residents). *Bona fide* visitors, special category persons and permanent residents must abide by the requirements of Part IV of the Act.

24. If the Minister makes a decision under section 25 (1) of the Act refusing permission to land, remain in or reside in Bermuda, or places a limitation on any permission that is granted (hypothetically a time limit), those decisions are expressly appealable to the IAT under section 25 (2). Section 25 (2) says in no uncertain terms that *"any person who is aggrieved by any decision of the Minister with respect to a refusal to grant any permission under subsection (1) or with respect to any condition or limitation imposed under subsection (1) may, subject to section 124, appeal to the Immigration Appeal Tribunal against such decision."* The particular section does not deal with the decisions where the Minister has revoked permission to reside in Bermuda. Later on we will see that there is an appeal section that deals with revocations.

25. Hypothetically, if a spouse of a Bermudian were denied entry into Bermuda, the spouse would have a right of appeal to the IAT under section 25 (2). This is an example that crops up with a degree of frequency. Generally, anyone whose application to reside in Bermuda has been turned down, has a right of appeal to the IAT.

26. Part IV of the Act goes on to deal with particular circumstances and situations: what constitutes a *bona fide visitor*; special provisions relating to the landing of spouses; requirements imposed in respect of special category persons and their family members; provisions dealing with exceptional persons (persons with specific health challenges, destitute persons, persons with criminal records etc.).

27. Sections 31A to 31C deal with applications for Permanent Residency certificates and the rights or privileges of such certificate holders and family members. Sections 31A (7)and 31B (4) give a person whose application for a Permanent Residency Certificate has been turned down by the Minister, the right to appeal to the IAT. In each case the legislative draftsperson has utilized the adoption method that was used in Part III of the Act.

28. So far, we have been concerned in this Part with permissions to enter and reside to Bermuda and we have seen that decisions of the Minister are appealable to the IAT. Similar to the Bermuda Status sections, there is an express right of appeal where the Minister has revoked a Permanent Residency certificate under section 31D (1) of the Act or where the Minister has revoked any permission to land, remain or reside in Bermuda under section 34 (1) of the Act. Section 34 (4) of the Act expressly and unambiguously states that *"any person aggrieved by any decision of the Minister to make an order under subsection (1) against him may, subject to section 124, appeal to the Immigration Appeal Tribunal against such decision.* Section 31D (2) (which relates to the revocation of a Permanent Residency Certificate) uses the adoption method and states *"the provisions of section 34 (2), (3) and (4) shall have effect, mutatis mutandis to a revocation made under this section 34".*

29. The language that gives a person the express right of appeal is predictable and adheres to a pattern. There is usually in clear and unambiguous language some provision or section of the Act that spells out a specific right of appeal (such as section 19(8) or section 34(4) of the Act) and from time to time other sections in the Act will adopt by reference that right of appeal (section 31D (2) being an example of the adoption method).

Part V of the Act: Regulation of Engagement in Gainful Occupation (sections 57 to 68)

30. Part V deals with the right or the permissions that are necessary to engage in gainful employment in Bermuda – i.e. work permits. Residing in Bermuda can be a facet of employment but residency is not the focus of Part V or what the Minister's decisions are directed towards. To put it another way residency is incidental to the work permit process. A work permit may presuppose permission to reside but the mere fact that residency is tangentially involved does not mean that a person who has had his work permit application refused, can appeal to the IAT by seeking to use the appeal rights under Part IV of the Act unless the Act expressly and unambiguously provides an express right of appeal either by incorporating a specific appeal provision or by using what I have referred to as the adoption method.

31. With few exceptions (people with Bermudian Status, special category persons, people with spouse's employment rights, permanent residents), any person while in Bermuda engaging in any gainful occupation must have first obtained the permission of the Minister. Section 60 sets out the requirement. The existence of this section makes my point that the right to enter or reside in Bermuda under Part IV of the Act is a different decision than a decision that specifically relates to working in Bermuda.

32. Section 61 sets out how and what forms are used to apply for a work permit, what factors the Minister should take into account, what conditions and limitations the Minister can impose. Interestingly, the Act does not refer to "work permits" but in practice that is the document that grants the permission to work in Bermuda.

33. Unlike the application process for Bermuda Status (Part III) or the application process for entering or residing in Bermuda (Part IV), there is no specific section that expressly or by using the adoption method gives a person the right to appeal to the IAT where the Minister has turned down an application for a work permit (as contrasted with revocation of a work permit which is addressed below). There is no express provision nor adoption language that says that section 19(8) appeal rights apply to a decision by the Minister to refuse an application for a work permit. The section and indeed all of Part V is silent on whether there is an appeal right from such a decision.

34. If there is no right of appeal to the IAT for this type of decision, then the only recourse is for a person to file judicial review proceedings. It is interesting that with respect to decisions of the Minister that deal with who can land or reside in Bermuda, the IAT has jurisdiction to hear appeals from such decisions but in the case of work permit refusals there appears to be no jurisdiction. Perhaps, it is because work permits have always been the source of great national importance, much discussion, debate and emotion and it was thought better not to subject the Minister's decision to a review by the IAT. Perhaps it was a legislative oversight. It does appear that the former reason, may be closer to the mark, as section 61 (8) gives Cabinet the power to direct the Minister to approve or reject certain types of applications. It is this section of the Act that no doubt results in certain categories of employment being restricted from time to time. It would be unusual for the IAT, without express legislative authority, to review and overturn such policy directives. The section does suggest that the legislature may have intentionally decided to exclude appeal rights where the decision of the Minister is directed at who is permitted to work in Bermuda.

35. What is clear and consistent with Part III and Part IV of the Act, is that in the case of work permit revocations, there is an express right of appeal to the IAT. Under section 61 (7) of the Act the Minister has the power to extend, revoke, vary or modify the terms of previously granted permissions to work. Within this specific section, there is a limited appeal right to the IAT. In the case of any revocation or imposition of a restriction by the Minister, he must notify the work permit holder and (here comes the adoption method) *"the provisions of section 34 (2), (3) and (4) shall apply mutatis mutandis to the making of such an order."* Section 34(4) of the Act gave an aggrieved person the right to appeal to the IAT in the case of landing, remaining and residing decisions of the Minister. Section 61 (7) adopts this appeal process but restrictively only where there has been a revocation of a work permit or a restriction imposed on an existing work permit. The existence of this limited right of appeal provision does strongly support the position that it was the intention of the legislature not to extend the right of appeal to those persons whose application for a work permit has been denied by the Minister. Putting to one side

legislative intent, section 124 (1) only allows a person to appeal to the IAT if there is set out in the legislation an express right of appeal. In the case of work permit refusals, the Act does not give an express right of appeal. The restrictive scope of section 61 (7) makes it plain that appeals from work permit refusals are not to be heard by the IAT.

The Arguments advanced by Counsel for the appellants

36. Section 13A to 13G of the Act (contained in Part II of the Act) establishes the IAT, and addresses such things as the duties of the Chairman and Deputy Chairman, conflicts of interest, what decisions or rulings the IAT can make if the appeal is successful or the Minister's decision is upheld and rights of appeal to the Supreme Court.

37. The argument advanced by the attorneys present at the hearing was that because section 13D (2) makes a specific reference to an appeal from a decision made by the Minister under section 61, it must clearly follow that any decision arising from section 61 can be appealed. The argument is that section 13D (2) (b) is the provision that gives an express right of appeal for all work permit related appeals. In considering this argument, you have to step back and consider section 13D as a whole. I set out the section in its entirety below:

> Determination of Appeals
>
> 13D (1) On an appeal of the Minister's rejection of an application under section 19 to 20B, 20D to 20F, 31A or 31B or of the Minister's refusal to grant any permission under section 25(1), the Immigration Appeal Tribunal may-
>
> (a) (b) confirm the decision of the Minister; or quash the decision and direct the Minister-
>
> (i) to issue a certificate of Bermudian status under section 21(1) or to grant a permanent resident's certificate under section 31A or 31B, as the case may be, where the appeal is in respect of an application under section 19 to 20B, 20D to 20F, 31A or 31B; or
>
> (ii) to grant specific permission to land in, or having landed to remain or reside in Bermuda, where the appeal is in respect of a refusal of permission under section 25(1).
>
> (2) on an appeal of an order made by the Minister under section 22(3) or a decision made under section 31D, 34 or 61, the Immigration Appeal Tribunal may –
>
> (a) (b) confirm or quash the decision; and in the case of a decision to restrict the terms of a permission granted under section 61, direct the Minister to issue an order under that section containing such terms as the Immigration Appeal Tribunal sees fit.
>
> (3) Notice of the determination of the Immigration Appeal Tribunal, together with a statement of its reasons, shall be given to the appellant and to the Minister and, unless the Immigration Appeal Tribunal otherwise directs, the determination shall come into operation when that notice is given.

38. Section 13 D is not an enabling provision that creates an express right of appeal. If it were, there would be no purpose behind the various sections of the Act that specifically give a right of appeal in specifically stated circumstances. The purpose of the provision is to tell the IAT what remedies or directions it is capable of imposing; that is all. It tells the IAT what it can do if an appeal has been properly brought under section 124. The references in 13D (1) to various sections of the Act such as section 19 to 20B, 20D to 20F, 31A or 31B and section 25 (1) refers you to those sections of the Act to identify the express right of appeal. In fact, we know that each of those sections specifically provides for a right of appeal with regard to particular decisions made under those sections. This is equally true of section 13D (2) where reference is made to appeals arising from decisions made under section 22(3), 31D, 34 or 61. As we have seen, when you go to each section of the Act that is referenced in section 13D, you will find embedded in the particular section or embedded in a neighbouring section (section 20C is such an example) clear, unambiguous wording which expressly gives a right of an appeal and defines the scope of the appeal right. Each section has to be read with care to determine whether any limitations or restriction are imposed on the right of appeal. As we have seen, section 61 is not like the other appeal sections. Section 61 does not contain a general right of appeal from all work permit related decisions. Section 61 (7) only makes provision for limited appeal rights pertaining to revocations and the imposition of restrictions on existing permits.

39. Counsel argued with some force that it cannot be right that a person can appeal a decision to the IAT concerning landing, staying or residing in Bermuda but cannot appeal a work permit refusal. The two are often times inextricably linked goes the argument, and the aggrieved person should be able to have the entire matter dealt with by the IAT. It may be true there may be the occasional case where the person has to appeal to the IAT on the question of residency but will have to seek judicial review in regard to the work permit refusal. Perhaps where a person owns a condominium in Bermuda but his work permit is denied would be such a case. If the Minister directed the person to leave the Island that could result in an appeal to the IAT on residency and a judicial review proceeding before the Supreme Court on the work permit issue. That may create inconvenience in terms of costs and potentially some awkwardness associated with splitting up the related subject matters of residency and work permits but at present the legislation treats residency and work permits as two distinct applications under the Act (although the simple grant of a work permit does pre-suppose permission to reside for the period of the work permit).

40. While the IAT sees the advantages, convenience and cost savings of a one stop appeal process, the scope of its jurisdiction is defined by statute and it cannot of its own motion rewrite or expand the restrictive wording of the Act, particularly when the Act repeatedly says that the IAT can only hear appeals that are expressly provided for under the Act. The legislature may have had very good reasons not to extend the appeal process to work permit refusals, and it really is for the legislature to decide whether that line in the sand is something that was intentional or not and whether it should be kept or removed.

41. While time will tell, the concerns raised by Counsel may not come to pass or may only surface in the rare case. In the ordinary case of a fresh work permit application that is refused, where the applicant resides abroad and was hoping to work in Bermuda, a residency appeal to the IAT is not going to arise. In the ordinary work permit case where a work permit expires and the Minister refuses to either renew the permit or grant a new one, the person is usually asked to leave Bermuda by such and such a date. Implied approval to reside in Bermuda is obviously an important feature of any work permit but such approved residency ends either when the permit expires or on such date that the Minister directs the person to leave Bermuda. In the typical case, it is the refusal of the work permit that will trigger proceedings. It is going to be a rare case where residency becomes the issue for either the IAT or the Court to grapple with. The person's primary grievance is the work permit refusal, not residency. A person may have to and often does seek permission to either continue working or reside in Bermuda pending the outcome of any permitted appeal or judicial review proceedings. Sometimes the person just needs extra time to organize his affairs in order to leave Bermuda. Historically, the Minister has been sensitive to such matters and grants whatever reasonable requests are made. Is there a possibility, that there might be a case where both the IAT and the Court are engaged? The answer is yes but ultimately, the Court will always have the last say as any decision of the IAT is appealable to the Court.

Decision

42. The IAT heard and carefully considered the submissions of Counsel and the provisions of the Act. I and my fellow members of the IAT have concluded that the IAT has no jurisdiction to hear appeals where the Minister has refused to grant, renew or extend a work permit. The IAT is a statutory body and the extent of its jurisdiction is defined by the provisions of the Act. While the appellants and the Minister may have wished to confer a wider jurisdiction on the IAT then the Act presently permits, only the legislature can make that change. The only decisions of the Minister that relate to work permits that can presently be appealed to the IAT are where the Minister has revoked an existing work permit or where the Minister has imposed conditions or restrictions on an existing work permit. Revocation of a work permit is different than a refusal to grant or extend a work permit. Revocation is where the person has a work permit in existence and the Minister makes a decision to terminate or take back the work permit.

43. I do not believe that the IAT has received any appeals where the complaint is that the Minister has imposed a restriction or condition on a pre-existing work permit that is considered objectionable. If I am mistaken, such an appeal can be heard by the IAT. If your appeal arises from a decision where the Minister has revoked an existing work permit, the IAT can hear such an appeal. If your case falls into either of those two categories, you or your attorney should contact the Clerk of the IAT and seek a direction's hearing in order to progress your appeal.

44. If your appeal is from a decision where the Minister has refused to grant you a work permit or has refused to extend your work permit, then the IAT has no jurisdiction to hear such an appeal.

If your appeal falls into that category of case, you may wish to consult with an attorney and determine whether your grievance can be heard by the Supreme Court by way of judicial review proceedings.

45. If your appeal is from a decision where the Minister refused your application to reside and seek employment (ie not a work permit application), your appeal can be heard by the IAT, and you or your attorney should seek a directions hearing.

46. If, after you have read this Ruling, you remain unsure whether your particular appeal can be heard by the IAT, then you or your attorney should contact the Clerk of the IAT and request to appear before the IAT.

IMPORTANT NOTICE: Where a person is aggrieved by a decision of the IAT, he may lodge an appeal with the Supreme Court within 21 days from the date of the decision of the Immigration Appeal Tribunal pursuant to section 13G of the Act.

Dated this 31st day of May 2013

Timothy Z Marshall, Chairman

Kiernan Bell, Deputy Chairman
(I concur with the reasoning of the Chairman)

Delroy B Duncan, IAT Member
(I concur with the reasoning of the Chairman)

Immigration Appeal Tribunal

c/o Ministry of Home Affairs
2nd Floor, Sofia House
#48 Church Street
Hamilton HM 12
BERMUDA
(441) 294-9784

22nd March, 2013

Attn.:

Dear Sir/Madam:

RE: YOUR APPEAL TO THE IMMIGRATION APPEAL TRIBUNAL

We know that you have been patiently waiting for your appeal to be heard. Given the passage of time we would be grateful to receive written confirmation that you wish to proceed with your appeal.

The Government has recently appointed members of the public to serve on the Immigration Appeal Tribunal ("IAT"). As the newly appointed Chairman of the IAT I have selected a three person panel consisting of members of the Tribunal to hear your appeal. The Panel members are:

Mr Timothy Z Marshall - Chairman
Ms Kiernan Bell - Deputy Chairman
Mr Delroy Duncan

Attached for your assistance is a copy of the Rules that will govern your appeal.

Under Section 13A of the Bermuda Immigration and Protection Act 1956 ("the Act") (copy attached) the IAT and any Panel that I am required to appoint shall hear and determine appeals against decisions of the Minister "expressly allowed to be made under this Act". Section 13A suggests that not every decision of the Minister can be appealed to the IAT. This means that before proceeding to determine the merits of your appeal against the decision of the Minister, the Panel must first be satisfied that it has express jurisdiction under the Act to hear your matter.

In this regard we are requiring all appellants who are appealing against a decision connected to a work permit to satisfy the Panel that it is expressly permitted under the Act to hear such an appeal. In this regard, we would ask you to specifically be prepared to address the panel on the question of jurisdiction bearing in mind the provisions of the Act, in particular, sections 13A, 13 D, 34(4), and 61. We are also by copy of this letter to the Minister's representative seeking the Minister's position on whether the Panel has jurisdiction to hear such appeals. This is a legal issue and as such you are encouraged to consult with an attorney to assist you in addressing this question.

As this issue affects all work permit appeals, an identical letter to this has been sent to all other appellants similarly affected. The Panel members are the same in each case. We intend to seek submissions from all appellants and the Minister on this preliminary issue on an identical time frame and thereafter a decision will be made by the Panel as to whether it has jurisdiction to proceed with your particular appeal. This procedure has the benefit of ensuring that everyone is provided with a fair opportunity to address the Panel on this preliminary issue.

The Timeframe for Submissions and the Panel's Decision on Jurisdiction:

1. Written submissions from you and the Minister are required on or before Friday, 19th April, 2013. The submissions should be sent to attention of: Ms Glenda V Trott, Clerk to the Immigration Appeal Tribunal, c/o Ministry of Home Affairs, 2nd Floor, Sofia House, #48 Church Street, Hamilton HM 12 or to the Clerk's email address which is gvtrott@gov.bm.

2. All Appellants and the Minister's representative will be given an opportunity on Tuesday, 23rd April, 2013 to appear before the Panel to make oral submissions on the issue of jurisdiction. The Panel will be conducting this hearing at 9:30 am at the Meeting Hall of the Anglican Church, #29 Church Street, Hamilton HM12. The only issue that will be heard on that day is whether the IAT has jurisdiction to hear work permit related appeals.

3. Two week's thereafter, you will be notified of the Panel's decision on whether the Act permits the IAT to hear work permit related appeals, and in particular your appeal. If the Panel should determine that it has jurisdiction to proceed with your appeal, you will be notified of your hearing date.

Important Note: If you decide not to submit written submissions or avail yourself of the opportunity of making oral submissions, your appeal will not be dismissed, but the Panel will decide the issue of jurisdiction based on its determination of what the Act permits, after taking into consideration those submissions it may receive from other Appellants and the Minister's representative.

If you have any questions, concerning this letter please direct them to the Clerk's attention and she will assist you. The telephone number is 294-9784.

Yours sincerely,
Immigration Appeal Tribunal

pp. GVTrott

Timothy Z Marshall
Chairman

Encl

cc: Dr. Danette W Ming, Chief Immigration Officer
Representative of the Minister of Home Affairs