

THE IMMIGRATION APPEAL TRIBUNAL

(Case No: 7 of 2014)

IN THE MATTER OF THE DECISION MADE ON OR ABOUT THE
24 JUNE 2013 TO REFUSE PERMISSION TO RESIDE AND SEEK
EMPLOYMENT

B E T W E E N:

APPELLANT J

Appellant

-and-

THE MINISTER FOR HOME AFFAIRS

Respondent

APPEAL RULING

Hearing Date: Friday, 28 February 2014

Appellant Represented by:

Appellant, in person

Respondent Represented by:

Mr. Philip Perinchief, for A-Gs Chambers

HISTORY

1. This appeal is brought to the Tribunal with regard to the Appellant's application to reside and seek employment made on 1 May 2013 and which was refused by letter from the Department of Immigration on 24 June 2013.
2. The facts are not in dispute and are as follows. The Appellant in or around 2006, in her home country of the Dominican Republic, met and had a relationship with a Bermudian male. On 3 May 2010 they were married in the Dominican Republic and in 2010 they relocated to Bermuda. The Appellant, as a spouse of a Bermudian, was in a distinct category under the Bermuda Immigration and Protection Act 1956 ("The Act") and applied for her spousal letter ("Spousal Letter") from the Department of Immigration on 11 May 2010 which was granted.
3. Unfortunately, the marriage was not a happy one and the Appellant was subjected to physical abuse by her husband. It is to her credit that despite being in such a vulnerable position she left this environment and received support from her church and charitable organisations such as the Centre Against Abuse. She separated as from her husband in or around August/September 2012.
4. The Minister and the Department of Immigration thereafter exercised considerable latitude with regard to the Appellant, in particular, they allowed her at that time to keep her spousal letter and continue to work despite the 6 month separation allowance having passed. In fact, the Bermudian husband left Bermuda on 21 October 2012 and has not returned.
5. The Appellant supported herself with jobs doing domestic housecleaning and manicures. She advised the Department of Immigration that she needed to keep working under the Spousal Letter as she had three children to support in the Dominican Republic and bills to pay in Bermuda. In February 2013 a hair salon submitted a work permit application for the Appellant, but then withdrew the application a short time later. No other potential employers submitted an application for a work permit.
6. The Appellant's husband sent divorce documentation to the Department of Immigration on 30 April 2013 from the Dominican Republic. The Appellant appears to accept that the divorce documentation is valid.
7. On 1 May 2013 the Appellant, at the request of the Department of Immigration, surrendered her Spousal Letter to the Department of Immigration and made an application for permission to continue to reside and seek employment in Bermuda.

At that time, she acknowledged that she had not been able to identify an employer in Bermuda prepared to employ her on a work permit.

8. The Appellant advised that she was a qualified teacher and hairdresser in the Dominican Republic but other than a brief stint at a nursery school early in her marriage in Bermuda, there was no evidence to support the Appellant's ability to secure employment based on her teaching credentials.
9. The Appellant, other than her former husband, has no substantial connection to the jurisdiction. She has no family in Bermuda, she is not employed in Bermuda, she found it difficult to secure employment in Bermuda. While she has found solace in her church and fulfillment in volunteering her time and services to her church, this is her only connection to the jurisdiction.
10. In contrast, the Appellant has family in the Dominican Republic, she has qualifications which enable her to seek employment in the Dominican Republic, her children are in the Dominican Republic. The Appellant readily acknowledged that she could return to the Dominican Republic and provided no basis upon which it would be unsafe or difficult for her to do so.

JURISDICTION OF THE TRIBUNAL

11. Section 25 of the Act grants the Minister the power to give specific permission for an individual who is not Bermudian, or a special category person, a visitor, or a permanent resident, to reside in Bermuda (with or without the imposition of conditions or limitations). Any person who is aggrieved by a decision of the Minister with respect to a refusal to grant any permission under section 25(1) may, subject to section 124 of the Act, appeal to the Immigration Appeal Tribunal against such decision.

THE MINISTER'S DECISION

12. The Minister has extraordinary discretion and power under section 25 to allow someone who is not in the jurisdiction 'lawfully' under the Act to nonetheless remain in the jurisdiction. At the time he rendered his decision to refuse permission to reside and seek employment, there had already been a period of time provided to the Appellant following her separation from her husband to remain in the jurisdiction. There were no facts unknown to the Minister and which became known to the Tribunal during the hearing of the appeal.

THE TRIBUNAL'S RULING AND REASONS

13. The Tribunal, having considered all material matters, denies the Appellant's appeal and upholds the Minister's decision under section 25 to deny the Appellant's application to reside and seek employment.
14. In considering the appeal, the Tribunal did consider its jurisdiction under section 124 to do what is just. In this regard, the Tribunal notes that victims of domestic abuse do fall into a special category when considering what is just and that this is a factor to take into account when considering such appeals.
15. In addition to the fact that the Appellant was a victim of domestic abuse, the Tribunal took the following factors into account: (1) the latitude provided to her by the Minister and the Department following the separation from her Bermudian husband; (2) the lack of any substantial connection to the jurisdiction; (3) the Appellant's inability to find gainful employment outside of a restricted category; (4) her inability to support herself and her family in Bermuda; (5) her qualifications as a teacher and a hairdresser in the Dominican Republic; (6) the Appellant's confirmation during the hearing of family and a support system in her home country; and (7) lack of evidence of any hardship should she return to her country of origin.
16. While the appeal has been denied, the Tribunal encourages counsel for the Minister to forego any application for costs and the Tribunal gives a preliminary indication that it is not minded to grant any order for costs in favour of the Respondent in light of the financial hardship of the Appellant and the circumstances of the case.

DATED this 25th day of April 2014



Ms Kieran J Bell, Deputy Chairman, IAT



John David Massa, IAT Member



Jean-Paul Dyer, IAT Member

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.