

**THE IMMIGRATION APPEAL TRIBUNAL**

**(Case No: 8 of 2014)**

**IN THE MATTER OF THE DECISION MADE ON OR ABOUT THE 7  
DECEMBER 2012 TO REFUSE PERMISSION TO RESIDE AND SEEK  
EMPLOYMENT**

**B E T W E E N:**

**APPELLANT K**

**Appellant**

**-and-**

**THE MINISTER FOR HOME AFFAIRS**

**Respondent**

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**APPEAL RULING**

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**Hearing Date:** Wednesday, 2 April 2014

**Appellant Represented by:**  
Nancy Viera of Mussenden Subair

**Respondent Represented by:**  
Mr. Philip Perinchief, for A-G's Chambers

## **HISTORY**

1. This appeal is brought with regard to the Appellant's application to reside and seek employment made on 7 November 2012 and which was refused by letter from the Department of Immigration on behalf of the Minister on 7 December 2012.
2. The Appellant was employed by the Bermuda Hospitals Board ("BHB") as a registered nurse in 2002. Her work permit was renewed annually until 4 October 2012 when the BHB wrote to the Department of Immigration to advise the Department that the Appellant's work permit would not be renewed. Her work permit was to expire on 18 November 2012. The BHB denied the Appellant's request for a letter of release and advised the Department of their refusal to do so.
3. On 7 November 2012 (by letter dated 31 October) the Appellant submitted a letter requesting permission to continue to reside and seek employment in Bermuda. At that time she advised the Department that she did not have a letter of release from her employer and had filed an official complaint with the Department of Labour and Training and that a report was to follow. A manuscript notation of the Appellant's indicated that she was following up with Labour and Training regarding her Labour Report.
4. On 6 December 2012 the Department of Labour and Training provided a report to the Chief Immigration Officer which included references to a history of disciplinary issues connected to the Appellant and concluded that there are reasonable grounds to believe that the employer was not acting unreasonably in refusing to furnish the requested letter of release. The Minister rendered his decision refusing permission to reside and seek employment the following day.
5. The Appellant filed an appeal to the Immigration Appeals Tribunal on 13 December 2012 and left Bermuda on or around 15 December 2012.

## **JURISDICTION OF THE TRIBUNAL**

6. 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.

7. It was common ground that the Appellant, once her work permit expired, would not fall within any of the categories of person entitled to reside in Bermuda and absent the power being exercised by the Minister, would be in the jurisdiction unlawfully.

#### **The Minister's Decision**

8. The Minister has the extraordinary discretion provided under section 25 to grant permission to someone who is not in the jurisdiction lawfully under the Act to remain in Bermuda.
9. Section 25 of the Act sets out the general principle regarding restriction of entry into Bermuda. The section states that it is unlawful for any person other than a person:
  - a) who possesses Bermudian status;
  - b) who is for the time being a special category person;
  - c) who is, bona fide, a visitor to Bermuda; and
  - d) who is a permanent resident.

to land in, or having landed, to remain or reside in Bermuda, without in each case specific permission (with or without the imposition of conditions or limitations) being given by or on behalf of the Minister.... Provided that the Minister, in his discretion, may dispense with the requirements imposed by the foregoing provisions of this subsection". (*Emphasis added*)

10. The Tribunal' view is that the power to give persons who, for example, are no longer in Bermuda on a valid work permit, the permission to reside and seek employment, is an exercise of the extraordinary power given to the Minister under section 25.
11. The Minister in his letter of decision refusing to grant such permission states only "*The Minister of National Security has reviewed your request and after careful deliberation your request has been refused*". No formal reasons were given.

12. However, the Department of Immigration's recommendation memorandum to the Minister dated 6 December set out the following considerations:
- a) The appellant originally came to Bermuda on November 11 2002 on a work permit for employment with BHB where she has remained;
  - b) On September 14 2012 a letter was received by the BHB advising that they would not be renewing the work permit for the Appellant and they object to the Appellant seeking alternative employment. The objections were based on concerns of patient safety which arose after the Appellant was suspended within the last six months for neglect.
  - c) On 5 December 2012 the Department received a labour report from the LRO where she concluded that she has reasonable grounds to believe that the employer was not acting unreasonably in not furnishing the letter of release.
  - d) While not stated in the Minister's decision letter, counsel for the Minister stated it was implicit that these were the considerations relied upon by the Minister in making his decision.

### **Legal Argument**

13. The Appellant's counsel in oral submissions argued that the Appellant was denied natural justice in that the Appellant did not have any opportunity to be heard by the Minister and, in particular, to address the Minister on the reasons why the BHB had denied the Appellant her letter of release to seek further employment.
14. The Appellant did not appear before the Tribunal and there was no evidence before the Tribunal but for the correspondence on the Department File or included in the letter of appeal. In particular, there was no evidence before the Tribunal to suggest that the disciplinary and other issues which were the subject of the Labour Report were not true. Representations were made by counsel that the Appellant had not been made aware of the Labour Report and no explanation was given as to why an application for judicial review had not been made surrounding the decision of the Labour Relations Officer and the conduct of that investigation.
15. We do know that the Appellant had referred to the need for the Labour Report in her letter of 31 October. We do know that the Labour Report was provided to the

Department of Immigration. It is apparent from her own letter that she fully expected the Labour Report to be provided to the Department.

16. Appellant's counsel argued that the Minister had not received the letters of recommendation which were included in the Appeal bundle and that these letters would have been sufficient to persuade the Minister to grant permission to reside.
17. Counsel for the Minister argued that the Minister did exercise his discretion properly in refusing the Appellant's request to reside in Bermuda despite, following the expiry of the work permit in November, the Appellant's continued presence in Bermuda being unlawful.
18. Neither party relied on any legal authorities.

#### **THE TRIBUNAL'S RULING AND REASONS**

19. The Tribunal, having considered submissions of counsel for the parties 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.
20. 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 the power of the Minister to grant persons the ability to stay in Bermuda despite the fact that but for the proviso their continued presence is 'unlawful' – is an exceptional power. A person who is otherwise in the jurisdiction unlawfully under the Act should not have any expectation that permission will be granted by the Minister to stay. In the premises, there would have to be very compelling reasons for the Tribunal to overturn a decision of the Minister under section 25. Despite the Minister failing to expressly state his reasons, the basis for the Minister's decision appears to be the matters drawn to the Minister's attention by the Department in the memorandum of 5 December.
21. The Minister appears to have taken into account relevant considerations – in particular the length of time that the Appellant had been in the jurisdiction on a work permit, the reasons for denying the letter of release and the view of the Labour Relations Officer on whether this denial was reasonable or not. While the Appellant complains about not being heard by the Minister - or the process by which the Minister reached his decision, the Appellant given the Appellant's own correspondence did know that the Department of Immigration would be furnished with the report of the Labour Relations Officer and highlighted the fact that she

has sought a Labour Report herself to the Department. It is therefore, not improper that the Minister relied on this report in reaching his decision and the Appellant must have had every expectation that the Minister would be referred to the report. The Tribunal was not made aware of any facts that were not before the Minister during the course of the Appeal, beyond the letters of reference which are insufficient to cause the Tribunal to grant the Appeal. In the meantime, the Appellant left the jurisdiction shortly after the decision of the Minister which makes any appeal against the refusal to grant permission to reside otiose.

22. If the Appellant had been deprived of any right to be heard by the Department of Labour Relations or believed that the process engaged in by the Department of Labour was improper or denied her access to natural justice, she should have issued proceedings before the Supreme Court. The Tribunal's view is that this question of procedural fairness is not a matter capable of being addressed by this Tribunal. Furthermore, the Tribunal had no evidence before it to determine one way or another whether the Appellant was aware of the Labour Relations Report or not and had participated in that process, and if so, to what degree.

23. For the reasons set out above, the Appellant's appeal is denied.

DATED this 13<sup>th</sup> day of May 2014

  
Ms Kieran J Bell, Deputy Chairman, IAT

  
Ms J.E. Belinda Wright, IAT Member

  
Mr Michael-Jay Landy, 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.