# THE IMMIGRATION APPEAL TRIBUNAL

**(Case No: 9 of 2014)**

**IN THE MATTER OF APPELLANT L AND APPELLANT M (CONSOLIDATED APPEALS)**

**AND IN THE MATTER OF SECTIONS 20C AND 20D OF THE BERMUDA IMMIGRATION AND PROTECTION ACT 1956 (AND AMENDMENTS)**

**BETWEEN:**

**APPELLANT L**

**First Appellant**

**APPELLANT M**

**Second Appellant**

**-and-**

**THE MINISTER OF HOME AFFAIRS**

**Respondent**

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## APPEAL R U L I N G

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**Hearing Date:** Friday, 5 November 2013

**Counsel who appeared:**

Mr Michael Hanson (Appleby (Bermuda) Limited, attorneys for the Appellants)
Mr Philip Perinchief, representative for the Respondent

**HISTORY**

1. The appellants are not related but their respective circumstances are the same. They both have a permanent resident's certificate and they both have a sibling who is Bermudian. They wish, if possible, to have the same rights and benefits as their Bermudian siblings and as such applied for Bermudian status under sections 20C and 20D of the Bermuda Immigration and Protection Act 1956 ("the Act") which makes provision for the grant of Bermudian status where the applicant's siblings have Bermudian status.

2. Under the two sections of the Act an applicant must meet the following requirements:

   (a) was ordinarily resident in Bermuda on or before 31 July 1989;

   (b) has been ordinarily resident in Bermuda for a period of twenty years immediately preceding the application;

   (c) has other siblings all of whom possess Bermudian status; and

   (d) makes his/her application before 1 August 2010.

3. Appleby, who represents Appellant L and Appellant M, anticipated that the Minister may have a concern in regard to whether the applicants could establish that they were ordinarily resident on or before 31 July 1989 as Appellant M was born on 15 August 1989 and Appellant L was born on 10 February 1990. Appleby sought to address this concern by relying on the fact and legal principle that both applicants were *en ventre sa mere (in the mother's womb) and as their respective mothers were resident in Bermuda on or before 31 July 1989 so where they.* This submission is not one that would be readily familiar to non-lawyers and that explains why both applicants let the application date of 1 August 2010 go by and were late making their respective applications. The Minister, however, considered the applications despite the late filing but he refused the applications on the basis that Appellant L and Appellant M were born after 31 July 1989. The Minister's one word decision of "No" is recorded in manuscript on advisory letters from his Department respectively dated 16 September 2011 ("the Appellant M Decision") and 17 October 2011 ("the Appellant L Decision") which advised him that neither applicant was ordinarily resident in Bermuda on or before the magic date of 31 July 1989 and *"could not possibly fulfill requirement (a)".* The advisory letters do not set out the *en ventre sa mere* argument and there is no evidence that the Minister applied his mind to the submission. Appellant M was formally notified of the decision in a letter dated 12 October 2011 and Appellant L was similarly notified in a letter dated 21 October 2011.

4. Appellant L and Appellant M appealed the decisions to the Immigration Appeal Tribunal ("IAT").

**JURISDICTION OF THE IAT**

5. Pursuant to section 20C(8), as read with section 19(8), of the Act Appellant L and Appellant M have a right to appeal the Minister's decision to the IAT.

## GROUNDS OF APPEAL

6. By letters respectively dated 17 October 2011 (for Appellant M) and 26 October 2011 (for Appellant L) Appleby submitted an array of grounds of appeal but the central ground which was the focus of the appeals was the argument that Appellant M and Appellant L were ordinarily resident in Bermuda prior to 31 July 1989 as they were both *en ventre sa mere* and their respective mothers were ordinarily resident in Bermuda.

## RESPONSE

7. The Minister filed a Response dated 31 July 2013 to the grounds of appeal submitted on behalf of Appellant L and a similar Response was filed in regard to Appellant M's appeal.
   It is argued that an intention is required by the applicant, independent of his mother to be ordinarily resident in Bermuda. The case of *Shah v Barnett London Borough Council and other appeals* [1983] 1 All ER is cited as an instance where "ordinarily resident" signifies a choice by the applicant. It is a conscious choice that needs to be made and a child in utero is not capable of making such a choice.

8. The Minister's response to the *en ventre sa mere* argument advanced by Appleby is that its application has an isolated and restrictive application to the Succession Act 1989 and the Perpetuities and Accumulations Act 1989. The concept is not designed to have universal or general usage or application, and certainly there is nothing in the Act where that term or concept has been imported or adopted.

9. The Minister also argues that both applications significantly missed the statutory deadline of 1 August 2010 and on that basis his decision should be upheld.

## HEARING

10. The hearing was confined to legal submissions by Mr Hanson and Mr Perinchief; each supplementing their earlier filed and helpful written submissions. In the Ruling that follows consideration is given to the main arguments that each counsel advanced. Consideration was also given to a decision that was made by the Cabinet in 2009 in the case of [XXX] where Bermudian status was granted in similar circumstances to that of Appellant L and Appellant M. In addition to Ms [XXX] there was also another instance where Cabinet granted a status application. Mr Hanson argued that these two cases were favourable precedents that support the appellants' position and there is no reason

to treat them on a different footing. Mr Perinchief argued that the decision was wrong and need not be followed by the IAT.

**RULING**

***The En Ventre Sa Mere Argument***

11. These consolidated appeals requires the IAT to grapple with whether the requirement of being ordinarily resident in Bermuda on or before 31 July 1989 is met by both Appellant L and Appellant M who were both *en ventre sa mere* prior to the date, being carried by mothers who were ordinarily resident in Bermuda.

12. During the course of the hearing and in the legal authorities which the IAT were asked to consider the life form in a mother's womb is labeled in a variety of ways: child *in utero*, fetus, organic substance, organic matter, unique organism. The IAT was conscious that labels or words carry with them connotations: "child" oftentimes personalizes the life form and oftentimes invokes thoughts of nurturing and providing protection; "fetus" oftentimes invokes the opposite reaction; "organic substance" seems less than adequate but seems to be an attempt at using neutral words; and "unique organism" seems a respectful way to recognize the importance of the life form but in a way that does not offend. Even using the words "life form" in this paragraph is an inadequate attempt at neutrality. We thought it better just to use words and phrases that are commonly used (regardless of connotations) rather than awkwardly search for the perfect neutral word. More often than not we have used child *in utero* but we do so with neutrality.

13. The starting point to determining whether Appellant L and Appellant M meet the ordinary resident requirement is to consider the meaning of these words. The Act does not provide a definition of "ordinarily resident". The words should therefore be given their normally understood meaning or their plain and obvious construction *(see: the House of Lord's decision in Azam v Secretary of State for the Home Department et al [1974] AC 18; Sir James Astwood's judgment in Whalley v Minister of Labour and Home Affairs Civil Jur 1993: No 46; and Justice Simmons judgment in Schurman v the Minister of Immigration [2004] Bda LR 2).* The Privy Council in the case of *Inland Revenue Commissioners v Lysaght [1928] AC 234* determined that word "ordinarily" as opposed to extraordinary connotes *"the regular order of a man's life, adopted voluntarily and for settled purposes".* The House of Lords in the case of *Shah v London Bourough of Barnet (1983) All ER 226* adopted this meaning. In the Privy Council decision *in Levene v Inland Revenue Commissioners [1928] AC 217* Viscount Cave LC referred to the Oxford dictionary definition: *"to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place".*

14. Mr Perinchief on behalf of the Minister argues that these decisions require an intention on the part of an applicant and therefore the applicant must be capable of making

decisions, and voluntarily creating a regular mode of life for himself for a settled purpose. A child *in utero* has no such capacity and is thus incapable of being ordinarily resident at this stage of life.

15. That argument is countered by Mr Hanson who asserts that if Mr Perinchief were right than children (infants being the best example) who are born would never be ordinarily resident in a place until they are capable of making a voluntary decision and that cannot be right as a matter of law. He relies on *A v A and another (Children: Habitual Residence) [2013] UKSC 60* where the UK Supreme Court held that :

    *"One commonly relevant factor in the establishment of habitual residence is clearly the intention of the individual. But an infant of very tender years is in no position to form any independent intention. His or her habitual residence will normally be established by belonging to a family unit which has habitual residence in a particular place, and the infant will thus share it. As a generalization it is therefore plainly true that the infant will normally share the habitual residence of the person who has lawful custody of him, and that is a valuable aid to courts."*

16. The IAT is satisfied that this authority reflects the correct legal position as far as born children. A conscious decision or intention is still operating but it is being made by the parents which is understandable and to be expected.

17. Applying that authority to these appeals, the IAT would have no difficulty at all in concluding that from birth Appellant L and Appellant M were ordinarily resident in Bermuda as that is where their respective parents were ordinarily resident. This would remain the case until such time as Appellant L and Appellant M were capable of making independent decisions for themselves and decided to reside elsewhere. They have not. Bermuda has always been their home. The fact that both have PRC status reflects this reality.

18. The more difficult question for the IAT is when did such residency commence? In particular, can a child in the womb of the mother be ordinarily resident for the purpose of the Act? If the answer to that question is yes, then they meet the residency requirement for the grant of Bermuda Status.

19. The Act is quiet on this issue, which is not surprising as most people would assume (as did Appellant L and Appellant M) that where a piece of legislation requires the fulfillment of a number of years of residency or an age requirement, the count (depending on which direction you are counting towards) begins or stops at birth. So if you have to be 16 years of age before you can drive a 50cc bike on the road, you calculate your age from your date of birth. You would not ordinarily think of showing up to the Transport Control Department 6 months prior to your 16th birthday and assert that the Department should take into account the number of months you were in the womb.

20. The Act as we said above does not define the words "ordinarily resident" or seek to put any restriction on the meaning of the words other than to say that the applicant must have occupied that state on or before 31 July 1989 and for 20 years preceding the application. No legal authority was provided by either counsel that specifically addresses whether a child *in utero* can be ordinarily resident or whether being ordinarily resident in a particular case can be referenced back to life in the womb.

21. The Act does however use birth as a reference point in a number of sections such as section 18, (acquisition of Bermudian status by birth where birth is after 30 June 1956 and before 23 July 1993) and section 20A (acquisition of Bermudian status by certain long–term residents who were born in Bermuda) but birth or being born is not used in section 20C. The legislature also uses age as qualifying criteria for the grant of Bermudian status under sections 19 and 20. The legislature, when it deems it appropriate, ties certain qualifying criteria to when the applicant was born or to an age. Mr Hanson argues that the legislature could have easily used language that imported the clear direction that persons who were not born on or before 31 July 1989 do not qualify for Bermuda status under sections 20C and 20D. The fact that they did not, suggests that "ordinarily resident" is a more generous reference that is capable of being met by Appellant L and Appellant M. It is argued that it must be presumed that it was not the intention of Parliament to exclude persons who were not born on or before 31 July 1989.

22. The IAT does not think this argument determinative of the appeals. The legislature may have very good reasons in one section of the Act to make birth a qualifying factor for Bermudian status and to use ordinarily resident as a qualifying factor in another. These qualifying factors have different attributes. Birth is simply an event while ordinarily resident is more of a physical connection or presence in a particular place. It is true that if the legislature had used birth as the qualifying factor under sections 20C and 20D, we would not be considering this appeal as a reference to a birth date provides no argument, no wiggle room. You were either born on or before a particular date or you were not. However, whether the legislature should have or could have used a birth reference, does not shed light on how these appeals should be determined. In order for Appellant L and Appellant M to succeed, they must satisfy the IAT that the meaning of ordinarily resident encompasses their particular circumstances.

23. Under the common law a child *in utero* who is born alive is treated as though he had already been born whenever there is an advantage to be gained. For instance the law stepped in to deal with the unintended circumstance of a child not receiving anything under a parent's will simply because at the time the parent died the child was *in utero*. The law again stepped in again to allow a child negligently injured whilst *in utero* to pursue an action against the alleged wrongdoer. The doctrine is set out in such cases *as Villar v Gilbey [1907] AC 151; Doe v Clarke (1795) 2 H Bl 399; Elliott v Lord Joicey and Others [1935] AC 209; and Burton v Islington Health Authority [1992] 3 WLR 637.* The doctrine has been recognised and incorporated by the legislature in Part III, section

12 (1) (b) of the Succession Act 1974 and in Section 2 (1) of the Perpetuities and Accumulations Act 1989. Mr Hanson argues that the doctrine supports a meaning of ordinarily resident that ought to encompass a child *in utero* because to do so is of benefit or advantage to the interests of the afterborn child.

24. Mr Perinchief argues that the common law position is very much restricted in its application and the cases are generally dealing with a right of succession where a child would be excluded from a grant or bequest if the *en ventre sa mere* doctrine were not applied. He argues that the limited references to the doctrine in Bermuda's legislation makes it clear that the doctrine is not of general application but is used sparingly and deliberately by the legislature. The doctrine should not be used to extend what is normally meant by "ordinarily resident" which meaning presupposes the existence of a person outside of the womb.

25. Mr Hanson argued that the case of *Cohen v Shaw 1992 SLT 1022* encourages and provides authority for taking and applying a broader view of the *en ventre sa mere* doctrine:

*"Whilst past statements of the doctrine have usually been cited in relation to the rights of succession, there is nothing that the doctrine is to be given less than general application where this was of benefit to the interest of the afterborn child."*

26. The thrust of Mr Hanson's argument is as follows: A mother walks down the street with a child in her womb. No one knows for sure whether that child will enter the world and survive without the life support of the mother but can the child's existence and presence in our community be ignored simply because he or she is in a womb. Sure we can argue whether the child has rights independent of what his or her mother or legislation decides, but that does not change the fact that the child exists unless an event (natural or otherwise) occurs that ends the life. Until such an event occurs, there is no legal or factual basis for maintaining that the child is incapable of being considered ordinarily resident in Bermuda if the facts and the *en ventre sa mere* doctrine support such a finding. Just as with a child who is born into the world, wherever the mother is ordinarily resident is determinative of where her child *in utero* is ordinarily resident. If the legislature wishes to pass a law that prevents the application of the doctrine to section 20C then it must do so in clear terms. Alternatively, the legislature, can if it wishes, replace or supplement the qualification of "ordinarily resident" with a reference to being born as it has in other sections of the Act. Until then, the IAT is bound to recognize that a child *in utero* will and should be considered ordinarily resident in Bermuda if the mother or family unit is ordinarily resident here.

27. Mr Hanson's argument is an engaging argument but the IAT concluded that the *en ventre sa mere* doctrine cannot apply to the circumstances of these appeals and that the meaning of ordinarily resident which he has put forth is not its normally understood meaning or a plain and obvious construction.

28. Being "ordinarily resident" is not a benefit or an advantage. All the authorities on *en ventre sa mere* are based on extending rights and entitlements: being able to sue for a prenatal injury, being able to take a bequest under a will. The birth crystalizes these rights but in each instance they are rights and benefits that the law, for very good, but exceptional reasons, recognise and accommodate by applying the doctrine of *en ventre sa mere*. However, in the instant case, we are not dealing with a right or a benefit that surfaced while the child was *in utero* which the child should be allowed to take advantage of at or after birth; we instead are dealing with a qualifying, factual requirement, namely on the evidence whether it was the case that Appellant L and Appellant M were ordinarily resident in Bermuda on or before 31 July 1989. Being ordinarily resident somewhere is not a right or benefit but rather it is a factual connection to a particular country. Being ordinarily resident in a particular place may very well lead to the grant of rights and benefits (citizenship) and equally it may lead to a variety of onerous obligations (taxation). Being ordinarily resident, however, in of itself, is neither a benefit nor a burden. It is simply a factual circumstance. If the appellants can show that they were ordinarily resident in Bermuda on or before 31 July 1989, then they have satisfied one of the substantive requirements of sections 20C and 20D of the Act. If, however, they were not ordinarily resident then, the Minister was right to have turned down their applications.

29. The cases submitted by both counsel direct the IAT to give the words "ordinarily resident" their ordinary meaning. It has always been applied in reference to living, breathing persons that have an autonomous existence. The IAT cannot ignore that reality. The meaning given by the Privy Council is one that addresses the circumstances of a person who is living in the world (not in the womb): *"the regular order of a man's life, adopted voluntarily and for settled purposes".* It does not apply to all life forms such as cats or dogs or birds. It is a human construct that applies to persons for the purpose of identifying where is the place that they normally, regularly live. The law recognises that born children can be ordinarily resident but their residence is dictated by their family unit and in particular where their parents ordinarily reside. These born children are in the world and live and reside with their parents or parent. They have a name, identity and an autonomous, recognizable presence in the world, albeit they need their parents' support and help. The IAT however, is being asked to push the envelope and apply it to a child *in utero* or put another way, allow Appellant L and Appellant M to be recognised as having been ordinarily resident in Bermuda when they were in their respective mother's womb as that would meet the 31 July 1989 cut-off date. There is no factual or legal basis for extending the ordinary meaning of residency.

30. Under sections 20C and 20D the right to make an application for Bermudian status is given to a "person". Our everyday understanding of that word is a human being who is out there in the world, not a child *in utero.* The section speaks to this human being and gives him or her right to apply for Bermudian status if he or she can demonstrate that he meets the qualifying criteria, the majority of which concerns his or her factual

circumstances during the course of his lifetime. Our understanding of what a person is, is grounded in a common, well understood starting point of birth. The same is true in regard to the term of "ordinarily resident". In the absence of legislation to the contrary, embodied or implied in the term is that the person is out in the world and not in a prenatal state of existence.

31. When someone reflects back on their life, it normally and naturally starts from birth. "I was born in Bermuda and we lived in such and such Parish". No one would naturally say "I resided in the womb of my mother or I lived in Somerset because I was in my mother's womb at the time." That reference point of being in the womb is just not in our thinking or understanding when it comes to considering what is meant by being ordinarily resident in a place. Even when we open our minds to the possibility of an extended meaning of those words, we still come back to the fact that the meaning of residency, as ordinarily used in Bermuda, does not naturally embrace or apply to a child in a mother's womb. If we are going to extend the meaning then it must be by legislation or in recognition that society's understanding of "ordinarily resident" has become more expansive. There is nothing at this stage to suggest that the normal, ordinary meaning of "ordinarily resident" encompasses or has applicability to a child *in utero.*

32. In considering the authorities provided by the parties, it was unfortunate but not particularly surprising that there was no direct authority or judicial guidance on whether a child *in utero* could be "ordinarily resident" in a particular country. However, the IAT did run a search on 29 April 2014, and the case of *B v H (children) (habitual residence) [2002] 2 FCR 329* did materialise where Charles J of the English Family Court considered the issue of born children and "ordinarily resident". In the course of argument consideration was given to a child *in utero (see pars 143 to 148 of the Judgment).* While the learned Judge's observations and comments on *"the status of a foetus"* are *obiter* he accepted that a number of Court of Appeal cases support a conclusion that a child cannot acquire an habitual residence until he or she is born and becomes an independent being. He cited *Re MB (An adult: Medical Treatment) [1977] 2 FCR 541* where the Court of Appeal concluded that it did not have jurisdiction to take into account the interests of an unborn child at risk from the refusal of a competent mother to consent to medical intervention. The Court of Appeal also considered that the European Commission of Human Rights offered no assistance. The Court of Appeal followed a line of cases that concluded that a foetus cannot in English law have a right of its own until it is born and has a separate existence from its mother and that this position permeates the whole of the civil law of the United Kingdom and common law countries. Charles J also cited *Re F (In Utero) [1988] FCR 529* that reached a similar conclusion and concluded that it was a matter for Parliament to decide what medical rights should be extended to a child *in utero.*

33. Charles J acknowledged that the House of Lords in *A-G's Reference (no 3 of 1994) [1998] AC 245* accepted that a foetus was neither a distinct person separate from its mother nor merely an adjunct of the mother but was a unique organism to which

existing principles of law, applicable to autonomous beings, could not necessary be applied. The Judge thought that perhaps the unique organism status might potentially give rise to an argument that a foetus might have an habitual residence or at least that the status of a foetus could be a relevant consideration. The Judge dodged the bullet and concluded that careful argument would have to be developed before a decision could be made and that it was not necessary for him to consider the issue in the particular case before him.

34. The IAT on 30 April 2014 invited Mr Perinchief and Mr Hanson to provide brief written submissions on the *B v H* case which they both did. Mr Perinchief not surprisingly argued that Charles J's observations in *B & H* supports the Minister's position that a foetus is not in a legal position to make a choice, conscious or otherwise, to decide to make a settled decision on where it is habitually resident. He argues that no court has extended the umbrella of ordinary residence to include a foetus by virtue of the foetus being a unique organism. Mr Hanson argues that *B & H* leaves the door open to the IAT to extend the benefit or advantage of being "ordinarily resident" to a child *in utero*.

35. The IAT does not believe that the "unique organism" status of a child *in utero* changes at all what is the commonly held, normal understanding of what is meant by "ordinarily resident" or to whom these words apply. It applies to born persons. The fact that an organism (the House of Lords description) is unique or holds a special place in our society does not mean that a Court or a tribunal should or can expand ordinary meanings and understandings. Absent legislation, a unique organism in the womb is not an entity that can be said to have a residence in Bermuda. The IAT is fortified in this finding by the case of *Regina v Newham London Borough Council [1996] QB 507 (CA)* which was cited in *B & H.* The Court of Appeal was asked to consider whether an unborn child is a "person" under section 75 of the Housing Act 1985 who might reasonably be expected to reside with an applicant who was seeking housing. The Court of Appeal held that on a true construction of section 75 the word "person" should be given its proper and ordinary meaning, namely a person who is alive at the time the housing offer was made, and therefore the applicant's unborn child was not a person who might reasonably be expected to reside with the applicant. Similarly, the Bermudian status application process under sections 20C and 20D is an avenue that is available to a "person" and that person must establish that "he" was ordinarily resident in Bermuda prior to 31 July 1989. The context and wording of these provisions envision that the person is alive in the sense of having been born on or before 31 July 1989 and it is that existence in the world that gives rise to the possibility that the person may be able to establish that he or she was ordinarily resident in Bermuda as required by the provisions.

36. The Appellant L and Appellant M appeals do challenge us to think outside of the box, and the IAT did temporarily explore that universe but ultimately we thought we should come back home and give the words "ordinarily resident" their normal meaning and their normal application. The IAT is satisfied that its position is consistent with the legal

authorities on ordinarily resident and those cases that have considered what interests or rights a child *in utero* might have.

37. Mr Hanson did raise the right to family life under the European Convention on Human Rights. The IAT does not think that family life is engaged in this particular debate. Either a person meets the requirements of sections 20C and 20D of the Act, or not. Nothing in the sections offends family life rights, and the Minister's decision has not created a situation where family life rights have been compromised.

***The late filing argument***

38. Whilst not strictly necessary to decide, Mr Perinchief argued that since Appellant L and Appellant M were late in filing their applications to the Minister that their appeals should be dismissed on that ground. Section 20C required their applications to be in before 1 August 2010. Appellant M's application was submitted on 18 October 2010 and Appellant L's was made on 9 September 2011. Appleby addressed this matter in the covering letters that they submitted to the Minister and explained that neither applicant realised that they might meet the qualification of being ordinarily resident before 31 July 1989 and it was only after the deadline expired that they received advice on the *en ventre sa mere* doctrine. The IAT has determined in a previous case that if a requirement is procedural in nature the Minister and the IAT has a degree of wiggle room or discretion and can still go ahead and consider the application or the appeal (the IAT relied on the Ex Tempore Ruling of the Chief Justice dated 21 June 2013 in Civil Case 2013 No 84). A filing deadline in the IAT's view is a procedural requirement and a late filing can be accepted if the Minister is satisfied with the reason given by the applicant. In this case, Appleby gave the explanation and in both cases the applications were processed by the Ministry and duly considered by the Minister on their merits. The Minister did not refuse the applications because they were filed late; he refused them because he determined that the applicants were not ordinarily resident in Bermuda on or before 31 July 1989 (a substantive requirement). Once a Minister has determined an application and has taken no issue with a late filing, he cannot seek thereafter to uphold his decision by pointing to the deadline provision. If the Minister is going to take the point, he must do so as part of his reasons for refusing the particular application.

***Whether the [XXX] case is a precedent that should be followed***

39. In light of this ruling it is not strictly necessary to consider what weight if any should be given to the fact that a former Cabinet granted [XXX] and another applicant Bermudian status in similar circumstances. Mr Hanson urged that the IAT should give some weight to these decisions as justice demands that the Minister ought to make consistent decisions. Mr Perinchief argued that the decisions have and should be given no precedential value. He argued that the decisions were demonstrably wrong. The IAT have noted the decisions but do not believe they can be followed. The IAT simply did

not have enough information before it to assess on what basis the appeals were granted by the former Cabinet. The IAT does not know whether the decisions were based on expediency or were based on a compelling analysis of legal authorities. Consistency in the decision making process is an admirable result but only if the decisions are based on a correct view of the law. The IAT unfortunately does not have the benefit of being able to review Cabinet's reasoning and without reasons, we are not in a position to assess what weight should be given to the decisions. The IAT must decide the appeals before it afresh.

40. **For the foregoing reasons set out above, the appeals are dismissed. Pursuant to section 13D (1) (a) of the Act, the IAT confirms the decision of the Minister.**

**DATED this 5th day of June 2014**

**Timothy Z Marshall, Chairman of the IAT**

**Francis R Mussenden, IAT Member**

**J E Belinda Wright, 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.