

**THE IMMIGRATION APPEAL TRIBUNAL**

**(Case No. 15 of 2014)**

**IN THE MATTER OF AN APPEAL OF THE DECISION MADE BY THE MINISTER OF HOME AFFAIRS ON OR ABOUT 26 SEPTEMBER 2011, REFUSING AN APPLICATION FOR PERMISSION TO RESIDE AND SEEK EMPLOYMENT IN BERMUDA UNDER SECTION 27A OF THE BERMUDA IMMIGRATION AND PROTECTION ACT 1956**

**BETWEEN:**

**APPELLANT S**

**Appellant**

**-and-**

**THE MINISTER OF HOME AFFAIRS**

**Respondent**

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**RULING**

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**Hearing Date:** 24 January 2014

**Counsel who appeared:**

Ms Keren Lomas and Ms Alma Dismont (Lomas & Associates), attorneys for the

Appellant

Mr Philip Perinchief, representative for the Respondent

1. The Appellant was born in Jamaica. On 31 December 2005 he married a Bermudian and during the course of the marriage he was recognised by the Department of Immigration to be a "*special status husband*" as defined under section 27A of the Bermuda Immigration and Protection Act 1956 ("the Act") which gave him the right to reside in Bermuda without making application under section 25 of the Act, and by virtue

of section 60 (1) (c) of the Act he also had the right to work in Bermuda without immigration control.

2. The applicable sections of the Act and those that touch upon this Appeal are set out below:

***Declaration of general principle regarding restriction on entry of persons into Bermuda, and subsequent residence, etc., therein***

25 (1) *Without prejudice to any of the succeeding provisions of this Part, or to any provision of any other Part, it is hereby declared that it is unlawful for any person other than a person—*

- (a) who possesses Bermudian status; or*
- (b) who is for the time being a special category person; or*
- (c) who is, bona fide, a visitor to Bermuda; or*
- (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; and, as respects any special category person or a bona fide visitor or a person who is a permanent resident, such landing, remaining or residence shall be unlawful unless he conforms to any requirements imposed by this Part:*

*Provided that the Minister, in his discretion, may dispense with the requirements imposed by the foregoing provisions of this subsection.*

(2) *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.*

(3) *Section 27 and section 30 have effect respectively with respect to the special status, as respects entitlement to land in Bermuda, or to remain or reside therein, of wives and dependent children of persons who possess Bermudian status, and of wives and dependent children of special category persons.*

***Special provisions relating to landing, etc., of alien wives, etc., of persons who possess Bermudian status***

27 *Notwithstanding anything in section 25, and without prejudice to anything in section 60 (which section imposes restrictions on the engagement of such persons in gainful occupation) the wife and dependent children under eighteen years of age of a person who possesses Bermudian status shall be allowed to land and to remain or reside in Bermuda in connection with the residence therein of the person who possesses Bermudian status as if such wife or child were deemed to possess Bermudian status if all the following conditions are fulfilled—*

- (b) the wife must not commence to live apart from her husband under a decree of a competent court or under a deed of separation; and*
- (c) the wife and dependent children must not, while residing in Bermuda, contravene any provision of Part V (which Part relates to engagement in gainful occupation),*

*but if any of such conditions are not fulfilled, then the landing of such wife and dependent children, or their residence in Bermuda, shall be deemed to become unlawful except with the specific permission of the Minister.*

### **Special provisions relating to landing etc of husbands of Bermudians**

*27A (1) Notwithstanding anything in section 25 and without prejudice to anything in section 60, but subject to subsection (4), the husband of a wife who possesses Bermudian status (a "special status husband") shall be allowed to land and to remain or reside in Bermuda as if he were deemed to possess Bermudian status, if the conditions specified in subsection (2) are fulfilled in relation to him.*

*(2) The conditions to be fulfilled in relation to a special status husband are as follows—*

*(b) he must not contravene any provision of Part V;*

*(e) the Minister must be satisfied that the special status husband and his wife are not estranged.*

*(4) If a condition specified in subsection (2) is not fulfilled in relation to a special status husband, his landing or remaining or residing in Bermuda shall be deemed to be, or, as the case may require, to become, unlawful except with the specific permission of the Minister.*

### **Power to impose conditions in connection with permission to land, etc**

*32 (4) The Governor, or Minister, as the case may be, may withhold any permission or grant any permission subject to any duration, condition or limitation without assigning any reason for that decision.*

### **General principle regarding regulation of engagement in gainful occupation**

*60 (1) Without prejudice to anything in sections 61 to 68, no person—*

*(c) other than a person who for the time being has spouse's employment rights; or*

*shall, while in Bermuda, engage in any gainful occupation without the specific permission (with or without the imposition of conditions or limitations) by or on behalf of the Minister.*

*(3) For the purposes of paragraph (c) of subsection (1), a person shall have spouse's employment rights—*

- (a) who is married to, or is the widow or widower of, a person possessing Bermudian status (a "Bermudian spouse"); and*
- (b) who is living as husband and wife with that person's Bermudian spouse, or, where that spouse died, so lived up to the time of the death; and*
- (c) whose Bermudian spouse is ordinarily resident in Bermuda or, where that spouse died, was so resident up to the time of the death.*

*(4) In relation to the requirements of ordinary residence and living as husband and wife mentioned in subsection (3)—*

- (a) where any question arises whether a person was ordinarily resident in Bermuda, or was living as husband and wife with anyone in Bermuda, that question shall be decided by the Minister;*

**Grant etc. of permission to engage in gainful occupation**

61 (1) *This section shall have effect in connection with the application of any person to the Minister for the grant to that person of any permission under section 60.*

*(1A) Any such application shall be made on behalf of the applicant by his prospective employer who shall be responsible for ensuring that the application is complete and accurate in accordance with Guidelines issued by the Minister for the purposes of this section.*

*(4) The Minister, in considering any application for the grant, extension or variation of permission to engage in gainful occupation, shall, subject to any general directions which the Cabinet may from time to time give in respect of the consideration of such applications, take particularly into account—*

- (a) the character of the applicant and, where relevant, of his or her spouse;*
- (b) the existing and likely economic situation of Bermuda;*
- (c) the availability of the services of persons already resident in Bermuda and local companies;*
- (d) the desirability of giving preference to the spouses of persons possessing Bermudian status;*
- (e) the protection of local interests; and*
- (f) generally, the requirements of the community as a whole,*

*and the Minister shall, in respect of any such application, consult with such public authorities as may, in the circumstances, be appropriate, and shall in particular, in the case of an application for permission to practise any profession in respect of which there is established any statutory body for regulating the matters dealt with by that profession, consult with that body.*

*(6A) For the avoidance of doubt, it is hereby declared that a decision of the Minister to withhold permission or grant permission subject to any duration, condition or limitation, is not subject to appeal to the Immigration Appeal Tribunal.*

*(7) The Minister may extend, revoke, vary or modify the terms of any such permission.*

*(7A) Any such revocation or restriction of the terms of any such permission shall be effected by means of an order in writing served upon the person to whom it relates.*

*(7B) Before the Minister makes any order under subsection (7A) against any person, he shall cause a notification in writing to be served upon that person that he proposes to make such an order in his case at the expiration of fourteen days or such longer period as may be specified in the notification; and shall inform that person of the grounds upon which the Minister proposes to make the order and shall invite him within that period to submit in writing to the Minister any reason which he wishes to advance why such an order should not be made in his case.*

*(7C) The Minister shall not make any order under subsection (7A) until the expiration of the period specified in the respective notification served under subsection (7B) and the Minister shall, where reasons are submitted to him in accordance with subsection (7B), take those reasons into consideration when he decides whether or not the order should be made.*

*(7D) Any person aggrieved by any decision of the Minister to make an order under subsection (7A) against him may, subject to section 124, appeal to the Immigration Appeal Tribunal against such decision.*

3. The Appellant's rights as a "special status husband" under section 27A (1) of the Act were confirmed in a letter from the Department of Immigration, dated 3 December 2010. The letter stated that it stood in lieu of a Bermuda entry visa and remained valid until 3 December 2015 provided the Appellant remained married and living with his wife. He was directed to notify the Chief Immigration Officer of any adverse change in his marital status. During the course of the marriage and leading up to their separation, the Appellant was gainfully employed.
4. Having separated from his Bermudian wife, the Appellant made an application, dated 23 June 2011 requesting permission to reside and seek employment in Bermuda. He

confirmed that he was separated from his wife but was hopeful of reconciliation after a cooling off period. The Appellant obviously appreciated that he no longer met the section 27A (2) (e) requirement of not being estranged from his spouse and that his residency was deemed under section 27A (4) of the Act to be unlawful except with the specific permission of the Minister. If he wished to continue to reside and work lawfully in Bermuda he needed to make an application under section 25 as read with sections 27A (4) and 60 of the Act.

5. It is interesting to note in passing that a non-Bermudian husband married to a Bermudian loses his special status if there is "*estrangement*" (section 27A (2) (e)) while a non-Bermudian wife of a Bermudian loses her special status if she commences to live apart from her husband under a decree of a competent court or under a deed of separation (section 27 (b)). The non-Bermudian wife, however, is entitled to retain her special status if she is estranged from her Bermudian husband provided there is no Court order or deed of separation. In Bermuda, despite living in an age of equality, we treat non-Bermudian spouses differently and give greater protection to the wife. Under section 60 of the Act, which makes provision for "*spouse's employment rights*" the sexes are treated the same and non-Bermudian spouses only lose their right to freely work in Bermuda if they are no longer "*living as husband and wife*". So as can be seen we have three different standards operating: estrangement for male spouses under section 27A; living apart under a Court Order or deed of separation for female spouses under section 27; and not living as husband and wife under section 60. These competing standards or conditions are bound to create confusion and mistakes in how the law ought to be applied. It would make far more sense to have one standard that applies to all non-Bermudian spouses.
6. In this case, the Appellant's wife by letter dated 24 June 2011 informed the Department of Immigration that the Appellant was no longer residing with her. She said that they were no longer meant to be together, but she wished the Department to know that her husband was not a bad person.
7. By letter dated 26 September 2011 the Department of Immigration informed the Appellant that his application had been denied by the Minister and he was directed to settle his affairs and leave Bermuda on or before 31 October 2011. Unhelpfully, the Minister of the day gave no reasons for the denial.
8. Waiting for the decision the Appellant's life was put into limbo with all the worry and uncertainty of how to make ends meet and not knowing what the future would hold, all the while having to deal with the breakdown of his marriage. Then, with no control over when the Minister would make a decision, the Appellant received the decision and was told, without any reasons, that he has one month to leave Bermuda.
9. By letter dated 28 September 2011 the Appellant appealed the decision of the Minister to the Immigration Appeal Tribunal ("IAT"). He put forth the following grounds:
  - (i) He was married in 2005 to a Bermudian;

- (ii) He has been residing in Bermuda since August 2006 and has been a law abiding resident;
- (iii) While he and his wife are experiencing difficulties in their marriage, he remains hopeful that they will be able to resolve their differences;
- (iv) Neither he nor his wife has filed for divorce.

## **RESPONSE**

- 10. The Minister filed his short Response on 31 July 2013. A summary of the Minister's position is set out below:
- 11. The Appellant's "*special status husband*" status and his right to reside in Bermuda under section 27A of the Act is conditional on him residing in Bermuda as husband and wife, with his Bermudian wife (section 27A (b) (e) refers). His "*spouse's employment rights*" under section 60 (1) (c) of the Act is conditional on him living with his Bermudian spouse as husband and wife (section 60 (3) (b) refers). Under section 27A (4) residency is deemed to be unlawful if the husband and wife are estranged, and by implication under section 60 (3) (b) the "*spouse's employment rights*" terminate if the couple are not living as husband and wife. Permission to continue to reside and work in Bermuda must be obtained from the Minister even though as a matter of law the marriage has not been terminated by divorce.
- 12. It was therefore incumbent on the Appellant to immediately advise the Chief Immigration Officer and seek the necessary permissions. The Minister accepts that the Appellant and his wife gave the required notice of their change in circumstances and the Appellant duly applied for permission to reside and seek employment.
- 13. The Minister contends that the Appellant applied for permission under section 60, which application was considered under section 61. The Minister decided not to grant permission and pursuant to section 61 (6) of the Act he gave no reasons and was not required to do so.

## **JURISDICTION OF THE IAT**

- 14. Under section 25 (2) of the Act, the Appellant has a right to appeal the Minister's decision to the IAT. The substance of the Appellant's application and appeal was aimed at seeking permission to reside and seek employment. The IAT has previously ruled that it has no jurisdiction to hear appeals arising from work permit refusals under Part V of the Act which part includes section 60 unless the Minister is seeking to revoke an existing work permit or modify its terms. Section 61 (6A) of the Act, a recent amendment, makes this limitation in jurisdiction clear. The Appellant was not appealing from a work permit refusal and importantly, in terms of jurisdiction, he was not asking for permission to accept or continue in a particular job opportunity. That having been said, the IAT

observes that residency in Bermuda that arises from marriage to a Bermudian will frequently be intertwined with employment expectations. Indeed, both section 27 and section 27A reference the part of the Act that deals with employment. In these circumstances, it would perhaps be better if these two related subject matters were dealt with holistically by one appellate body.

#### **HEARING (24 January 2014)**

15. At the hearing, Ms Lomas introduced a statement dated 4 December 2013 from the Appellant which Mr Perinchief did not object to. The Appellant was sworn in and confirmed the truthfulness of the statement. The statement reiterated in greater detail the history which has been summarized above.
16. Ms Lomas submitted that the Appellant's application for residency and permission to seek employment was made under sections 25 and 60 of the Act, although on reflection she subsequently concluded that section 60 is concerned with permission to accept a particular job offer as opposed to the act of seeking or searching for a job.
17. Ms Lomas explained that the Appellant separated from his wife and left the matrimonial home largely as a result of the disrespectful and disruptive conduct of his stepchild and the company he keeps. The young adult's conduct has resulted in the matrimonial home being searched by the police, which has caused considerable upset and worry to the Appellant. The situation has caused friction in the marital relationship.
18. As a result of leaving the matrimonial home, the Appellant was no longer able to rely on his "*spouse's employment rights*" and he was obliged to leave his landscaping and skilled labourer job. Since 2011 the Appellant has had to rely upon his friends to support him.
19. Ms Lomas accepted the IAT's observation that the non-Bermudian spouse of a Bermudian who experiences matrimonial difficulties, leading to a separation, appears to have less security in terms of his residency in Bermuda and maintaining his employment than a non-Bermudian who has no Bermuda connections (such as a Bermudian wife or child). The work permit holder is not disadvantaged in any respect if he separates from his spouse. Ms Lomas argued that the non-Bermudian estranged husband should not be more vulnerable and in a worse immigration position than the work permit holder.
20. Mr Perinchief on behalf of the Minister reiterated the position that was set out in the Minister's Response. He was firmly of the view that this was an appeal brought under section 60 of the Act and it was properly decided under section 61 of the Act. The Minister must be taken to have addressed his mind to the considerations set out under section 61 of the Act and in particular the need to give Bermudians priority in terms of job opportunities. Having decided to refuse the application, the Minister was under no duty to give reasons.



## **RULING**

21. The Appellant had applied to the Minister to reside in Bermuda and seek employment. His application was not articulated with precision but in his letter of 23 June 2011 he sets out his position and states: *"[in] order to move forward, please advise me with a solution to continue in residing and seeking employment until my personal affairs have been resolved."*
22. Anybody can come as a *bona fide* visitor to Bermuda under section 25 (1) (c) of the Act and whilst here seek an employment opportunity by a myriad of ways such as looking at the classified section of the Royal Gazette, meeting with a recruitment agency or cold calling a prospective employer. Visiting a country oftentimes sparks an interest in exploring employment opportunities. No permission is required for making such inquiries. Such inquiries do not engage section 60 of the Act. Section 60 is entirely concerned with what permissions or conditions must be in place before a person can lawfully commence or engage in gainful employment. Accepting and obtaining the necessary approval of the Minister to engage in gainful employment should not be confused with seeking employment. Seeking may lead to an employment opportunity but normally seeking in of itself does not require the permission of the Minister. Further, section 61 (1A) of the Act makes it plain that the application for permission to work must be brought by the prospective employer. This process has nothing to do with seeking employment. It is correct that the activity of seeking employment may, if a specific job opportunity presents itself, ultimately lead to the section 60 process being engaged. Likewise, if a non-Bermudian spouse, who is not living as husband and wife, were to apply to keep his existing job, section 60 would in that circumstance be engaged. The Appellant's application was to do two things: lawfully continue his residency in Bermuda to put his matrimonial circumstances in order and to seek employment which are broader requests than asking permission to retain an existing job.
23. As a consequence the IAT has concluded that this is not an appeal from a refusal under section 60 of the Act. Sections 60 and 61 were not specifically engaged in this appeal. The Appellant's application in substance is an application under section 25 of the Act as read with section 27A (4).
24. The Appellant's difficulty, one that is shared by many male spouses who are estranged from their Bermudian wife, is that his residency becomes unlawful by virtue of the estrangement (section 27A (4) refers) unless the Minister grants him permission to continue his residency in Bermuda. It is quite surprising that one can find their presence in Bermuda to be deemed automatically unlawful the moment estrangement occurs in a relationship, particularly when it is oftentimes difficult to know exactly when that state of affairs has definitively occurred. That, however, is the present state of the law.
25. The Appellant did the best that he could do in the circumstances to regularize his situation. He applied to reside in Bermuda and to seek employment.
26. In this case, the Minister refused the application and directed the Appellant to make arrangements to leave Bermuda. No reasons at all were given by the then Minister for denying the Appellant's application to reside in Bermuda and seek employment. Under

section 32 (4) of the Act, which governs applications to reside in Bermuda, *“the Minister..... may withhold any permission....without assigning any reasons for that decision.”* Section 32 (4) was enacted prior to the creation of the IAT and it does not fit well with an appeal process that is designed to give an appellant the opportunity to challenge the Minister’s decision to an independent body. Further, it places the IAT in a potentially difficult situation because there is no way of knowing what factors operated on the Minister’s mind and what weight was given to such factors.

27. Sometimes the problem will be solved by the Minister providing evidence at the appeal which sets out the reasons for the refusal. In this case no evidence or scant evidence was provided that sought to justify the Minister’s decision to swiftly end the Appellant’s residency and continued aspirations of working in Bermuda. Reasons would have been helpful and the absence of reasons generally places the Minister at a disadvantage because there is nothing of substance on the record to explain why an unremarkable application for permission to reside was not granted.
28. Mr Perinchief was, therefore, put in an awkward position because he had to rely on factually vacuous submissions that the decision was within the broad discretion of the Minister and that once the marriage had broken down the non-Bermudian spouse generally can have no expectation of remaining and working in Bermuda. The theoretical argument advanced was that the Appellant had occupied a job that could be done by a Bermudian. As part of the record, the Recommendation Memorandum of the Acting Chief Immigration Officer, dated 5 August 2011, was produced where the Officer noted the Appellant was no longer working since the separation and *“based on the current employment climate”* the application should be denied. Mr Perinchief argued that the Minister must, therefore, be taken to have properly exercised his discretion in denying the application.
29. The difficulty with the argument is that the Appellant’s residency application was to enable him to seek employment opportunities. There are many job opportunities in Bermuda that eventually are taken up by non-Bermudians (even in the recessionary times that operated in 2011). By way of example, our restaurants in Bermuda are teaming with non-Bermudian workers who occupy positions that Bermudians do not want or where there are an insufficient number of Bermudians to take up the number of available positions. No good reason was advanced as to why the Appellant should not be afforded the opportunity to at least remain in Bermuda for a period of time to apply for jobs that are not attracting a sufficient number of Bermudians, and also give him time to address his relationship with his Bermudian wife.
30. Further, the IAT does not consider a theoretical argument of protecting jobs for Bermudians to be persuasive when measured against the legitimate expectations that arise from the union of marriage. The abrupt end of spousal rights does not mean that the marriage and the economic circumstances that flowed from that marriage can or should be ignored by the Minister or given little weight. Until the marriage results in divorce, the husband and wife remain married under the laws of Bermuda and that continuing relationship is an important consideration for the Minister to take into account on any application to remain and work in Bermuda.
31. It cannot be right to give a spouse the right to freely reside and work in Bermuda and then on a date that the Minister determines that there is estrangement, to prevent that person from continuing with his job or business or worst yet being abruptly told that he

must now leave Bermuda. The turmoil to that person, to his family and to his employer are obvious, and the orderly prevention of such unnecessary turmoil will normally outweigh most other immigration considerations. Most other immigration considerations will not be prejudiced by making provision for a reasonable transition period which allows the person to continue residing and working in Bermuda during the period. During the period the person will either have had sufficient time to repair his relationship with his wife or to prepare for a new immigration status.

32. As noted in the helpful exchange with counsel, a non- Bermudian work permit holder appears to have greater job security than someone in the Appellant's shoes because the work permit holder at least knows that his job will come to an end on a certain date unless the permit is renewed. The non- Bermudian spouse, however, presently lives in this uncertain world where his or her place of residency and job or business may come to an end simply because troubles have beset the marriage, and those troubles could be of a temporary nature and may arise through no fault of his own. The situation for some is made even more precarious because it is not uncommon for a disgruntled Bermudian spouse to use the Department of Immigration to excommunicate his or her spouse from the community. The Department's job is difficult enough without having the added burden of refereeing the personal issues of spouses. The implementation of a transition period evenly and fairly applied will put greater order to a difficult life occurrence.
33. If we are going to acknowledge and accept the likelihood of non-Bermudians marrying our Bermudian sons and daughters, then those non-Bermudians should be treated with dignity and not subjected to arbitrary decisions when the marriage falters.
34. Extensions to remain in Bermuda and seek employment are given regularly to persons with no special status. It does appear to the IAT that the Appellant was treated in an arbitrary and unjust manner by the then Minister solely because of the unhappy state of the marriage. If a person has lived a productive life in Bermuda, and has enjoyed the benefit of spousal rights, how can it be just, to direct such a person off the Island for no other identifiable reason other than an oblique reference to the economy? The relationship of marriage is meant to afford the non-Bermudian spouse with greater rights, not less than someone who is here on a work permit. When the relationship breaks down, the non-Bermudian spouse (save in exceptional circumstances) should not be directed off the Island but he should be given the opportunity to adjust to the new reality of his situation.
35. The Appellant came to Bermuda and from all indications worked hard and established relationships in the community. He separated from his wife and duly notified the Department of Immigration. He appears to have automatically lost his job as a result of the separation. There is no evidence that the Minister weighed up or adequately weighed up the needs of this man to either work on his marriage or to transition from a special status person to someone who must go through the work permit process. There was nothing of substance on the record that supports the Minister's decision. It is insufficient to ground a decision on nothing more than a factually empty reference to *"the current employment climate"*.
36. In the circumstances, the Minister was wrong not to grant the Appellant's application. For the reasons set out in this Ruling the Appellant's appeal is allowed.

37. Generally, what is a reasonable transition period and what should the transition period provide for? What should the transition period be for the circumstances that the Appellant finds himself in?
38. In answering these questions, the IAT has found it difficult to separate out the issue of residency from the issue of employment. As mentioned earlier, the IAT's jurisdiction is limited in respect of employment matters but one cannot sensibly address the implementation of a transition period without touching upon both aspects. If we are going to prevent injustice from occurring in future cases, then it is important that the IAT provides guidelines that are clear and deal with the entire subject matter. Strictly speaking, what we say about a residency transition period is squarely within our jurisdiction and what we say about allowing the non-Bermudian to continue working during the transition period is a matter for the Minister to give thoughtful consideration to.
39. By virtue of the fact that most work permits issued in Bermuda are at least of one year duration, most non-Bermudians (who are not married to Bermudians) have at least that period of time to ready themselves for the possibility that their permit may not be renewed or that their job will need to be advertised. While it will normally be a matter for the Minister's discretion, it strikes the IAT as sensible and just that a spouse of a Bermudian who had superior rights of residency and employment (to that of a work permit holder) by virtue of his marriage, should have at least one year from being notified that he is no longer considered to be a "*special status husband*" under section 27A of the Act to organize his affairs. There should also be the proviso that if reconciliation with his wife does take place, then the special status will be restored upon receipt of satisfactory evidence (normally a sworn statement or affirmation from the Bermudian spouse).
40. Upon estrangement occurring in his relationship with his wife, the non-Bermudian husband is expected to make application to the Minister to reside and continue his employment. He should set out his circumstances with sufficient details to enable the Minister to determine the appropriate transition period. Whatever transitional period the Minister considers to be reasonable, it ought to be supported by the facts of the particular case and of sufficient length to avoid the turmoil that has been identified in this Ruling and to give the husband and wife an opportunity to reflect and work on their relationship without the immediate and harsh complication of losing one's residency and job. The purpose of the transitional period is to ensure that all interested parties including the employer have adequate time to make the necessary adjustments to the new realities that are operating. The transition period will ensure greater certainty and remove the vulnerability that has existed for too many years in Bermuda.
41. How we treat non-Bermudians reflects on us all. Stripping spouses of Bermudians of their livelihood and abruptly removing them from Bermuda reflects a harshness that is not consistent with our values of fairness, treating people with dignity and understanding, and ensuring people in Bermuda are allowed to live here with a meaningful sense of security. These values echo what is enshrined in section 1 (a) of our Constitution: "*every person in Bermuda is entitled to the individual rights and freedoms of the individual....namely, life, liberty, security of the person and the protection of the law.*"
42. To ensure that the transition period operates as intended spouses of Bermudians should be informed by way of an advisory that they may reside in Bermuda and continue to work at their job or business until such time as their application for the transition period is

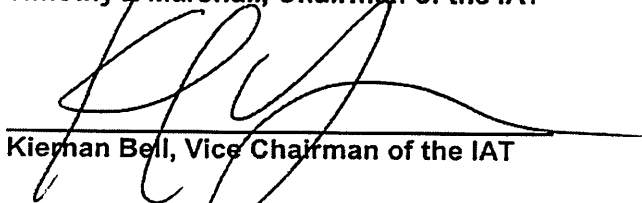
considered. The spousal rights certificate may be an appropriate vehicle for disseminating this information.

43. Where does that take us in term of an appropriate remedy for the Appellant? The Appellant's life has been in limbo since 2011 as he has waited for the IAT legislative framework to be passed, a hearing date to be set and this Ruling. He has relied on the generosity of friends to support him in the interim. There is no evidence that the Appellant has or will reconcile with his wife. He has had since 2011 to deal with the breakdown of his relationship and therefore a transitional period is not going to assist him in that regard. The only remaining issue is to ensure that the abruptness of being ordered off the island in 2011 is tempered in a manner that is consistent with the principles enunciated in this Ruling. The IAT considers it just to afford the Appellant an opportunity to transition from his previous status with dignity and with the possibility of securing a work permit. Pursuant to section 13D (1) (b) (ii) of the Act, the IAT directs the Minister, to grant him permission to reside in Bermuda until 30 June 2015 (or 7 months from the date permission is granted, whichever period is longer) for the purpose of seeking employment such employment prospects to be subject to the regular immigration rules. If the Appellant finds employment during that period, then his status going forward will be governed by the work permit, and if he does not find employment, then in all the circumstances it is time for him to make arrangements to leave Bermuda.
44. In all future cases of matrimonial breakdown (whether temporary or permanent), the IAT encourages the Minister to implement what has been described in this Ruling as a transitional period of residency and continued employment to ensure that existing employment relationships are not abruptly and arbitrarily terminated; to afford the Bermudian and non- Bermudian couple an opportunity to deal with their marriage issues; and to give the non-Bermudian spouse (who is unable or unwilling to repair the marriage) a fair opportunity to transition to the normal work permit regime and if that fails to leave the island with ample notice.
45. Nothing in this Ruling should be taken as affecting the ongoing policies that extend additional rights to non-Bermudians who are parents of Bermudian children.

DATED this 10<sup>th</sup> day of November 2014



Timothy Z Marshall, Chairman of the IAT



Kierman Bell, Vice Chairman of the IAT



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.