# In The Supreme Court of Bermuda

**CIVIL JURISDICTION**

**2013: No 165**

**IN THE MATTER OF ORDER 53 OF THE RULES OF THE SUPREME COURT**

**AND IN THE MATTER OF A DECISION TO REFUSE TO GRANT/ RECONSIDER NATURALISATION GIVEN ON OR ABOUT 1ST MAY 2013**

**BETWEEN:-**

**JOHN STEVENS**

**Applicant**

**-v-**

**THE GOVERNOR**

**First Respondent**

**and**

**THE DEPUTY GOVERNOR**

**Second Respondent**

**JUDGMENT**

**(In Court)**

Date of hearing: 11th October 2013
Date of judgment: 25th October 2013

Mr Peter Sanderson, Wakefield Quin, for the Applicant
Mr Michael Taylor, Attorney General's Chambers, for the Respondents

**Introduction**

1. By Notice of Motion dated 16th July 2013, the Applicant applies for judicial review of a decision by the Respondents to refuse to grant/reconsider a refusal to grant him naturalisation as a British Overseas Territories ("BOT") citizen. He seeks orders (i) quashing that decision and (ii) mandating the Respondents to reconsider, or alternatively grant, his application.

2. The application for leave to apply for judicial review was refused on the papers by Kawaley CJ on 27th May 2013, but allowed by me on a renewed application on 9th July 2013.

3. I am grateful to counsel for their assiduous research and their assistance with an issue that is by no means straightforward.

**Statutory scheme**

4. The application for BOT citizenship was made pursuant to the British Nationality Act 1981 ("the 1981 Act"). This was enacted by the United Kingdom Parliament and is a piece of domestic legislation within the United Kingdom. However section 53(5) provides that, with certain exceptions which are not relevant here, the provisions of the 1981 Act extend to all BOTs.

5. Section 41(1) of the 1981 Act provides that the Secretary of State may by regulations make provision generally for carrying into effect the purposes of the 1981 Act, and in particular provision for, among other things, the grant of naturalisation. For present purposes, "*naturalisation*" simply means the conferral of citizenship.

6. Section 43(1) provides that the Secretary of State may, in the case of any of his functions under the 1981 Act with respect, among other things, to naturalisation, make arrangements for that function to be exercised in any BOT by the Governor in cases concerning BOT citizenship. (However he may not delegate any power to make regulations or rules conferred on him by the 1981 Act.)

7. The Secretary of State, in exercise of the powers conferred by section 41(1) of the 1981 Act, made The British Nationality (British Overseas Territories) Regulations 2007 ("the 2007 Regulations"). Regulation 3 provides that any application for, among other things, a certificate of naturalisation as a BOT citizen shall be made to "*the appropriate authority*" specified in regulation 4. That regulation provides that the authority to whom an application is to be made is, if the applicant is in a BOT, the Governor.

8. Section 19A(2) of the Constitution of Bermuda provides that the Governor, acting in his discretion, may give the Deputy Governor written authorisation to exercise on the Governor's behalf any of the functions of the office of Governor. I draw the reasonable inference that the Governor had duly authorised the Deputy Governor to carry out the Governor's function of considering the Applicant's application for naturalisation as a BOT citizen.

9. Section 19 of the Interpretation Act 1951 ("the 1951 Act") provides:

> "*Any Act of the Parliament of the United Kingdom which is expressed to have effect, or whose provisions are otherwise applied, in respect of Bermuda, and any legislative instrument (not being a statutory instrument within the meaning of this Act) made, given or issued thereunder, which is expressed to have effect in Bermuda, shall be read with such formal alterations as to names, localities, courts, officers, persons, moneys, punishments and otherwise as may be necessary to make the Act of the Parliament of the United Kingdom or legislative instrument as aforesaid applicable to the circumstances of Bermuda.*"

Thus the 1981 Act, insofar as it has effect in Bermuda, falls to be construed by this Court as a piece of domestic Bermuda legislation. But insofar as the

1981 Act is a domestic United Kingdom statute, it is foreign law, and thus its construction within the United Kingdom is a question of fact.

10. Section 18(2) of the 1981 Act provides:

"*If, on an application for naturalisation as a British overseas territories citizen made by a person of full age and capacity who on the date of the application is married to such a citizen or is the civil partner of such a citizen, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen.*"

11. The requirements for naturalisation mentioned in section 18(2) of the 1981 Act are set out in Schedule 1 to the Act at paragraph 7:

"*(a) that he was in the relevant territory at the beginning of the period of three years ending with the date of the application, and that the number of days on which he was absent from that territory in that period does not exceed 270; and*

*(b) that the number of days on which he was absent from that territory in the period of twelve months so ending does not exceed 90; and*

*(c) that on the date of the application he was not subject under the immigration laws to any restriction on the period for which he might remain in that territory; and*

*(d) that he was not at any time in the period of three years ending with the date of the application in that territory in breach of the immigration laws; and*

*(e)* [that he is of good character and that he has a sufficient knowledge of the English language or any other language recognised for official purposes in the relevant territory]."

[Emphasis added.]

12. Schedule 2 to the 2007 Regulations deals with particular requirements for applications. It provides at paragraph 10 that an application under section 18(2) of the 1981 Act shall contain information showing, among other things, that the applicant possesses the requisite qualifications in respect of "*freedom from immigration restrictions*".

13. As we shall see, the meaning of "*restriction(s)*" in this context will determine the outcome of this application.

14. Schedule 1 to the 1981 Act provides at paragraph 6 read together with paragraph 8 that if in the special circumstances of any particular case the Secretary of State thinks fit, he may treat an applicant under section 18(2) as having fulfilled certain of the requirements in Schedule 1 when in fact the applicant has not done so. But the Secretary of State does not have that discretion with respect to the requirement at paragraph 7(c). That is a requirement with which an applicant must always comply.

15. It should be understood that the grant of BOT citizenship is separate and distinct from the grant of Bermuda status and confers no right of residence in Bermuda.

**Background**

16. On or about 14th May 2012 the Applicant, who is a Canadian citizen, applied for naturalisation as a BOT citizen. He had been resident in Bermuda for some 18 years. On 16th April 2011 he had married a Bermudian woman. He thereby became a "special status husband" within the meaning of section 27A of the Bermudian Immigration and Protection Act 1956 ("the 1956 Act"). This section provides:

"*(1) ... 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—*

> *(a) his wife must be ordinarily resident, or be domiciled, in Bermuda;*
>
> *(b) he must not contravene any provision of Part V [which concerns gainful employment in Bermuda];*

> (c) *he must not have a relevant conviction recorded against him;*
>
> (d) *the Minister must be satisfied that the special status husband is a person of good character and previous good conduct;*
>
> (e) *the Minister must be satisfied that the special status husband and his wife are not estranged.*
>
> *(3) In relation to a special status husband 'relevant conviction' in subsection (2) (c) means a conviction, whether in Bermuda or elsewhere, of an offence which, in the Minister's opinion, shows moral turpitude on the special status husband's part.*
>
> *(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.*"

17. On 19th December 2012 the Department of Border Control wrote to the Applicant. They advised him that the Deputy Governor's Office had considered his application and concluded that he was not currently eligible to be naturalised as a BOT citizen and that his application had therefore been refused. The letter added that by reason of section 44(2) of the 1981 Act the Deputy Governor was not obliged to give any reason for his decision.

18. Section 44(2) had in fact been repealed by another United Kingdom statute: the Nationality, Immigration and Asylum Act 2002. The Applicant therefore brought judicial review proceedings to challenge the failure to give reasons for the decision. The Respondents relented, and by a letter dated 22nd April 2013 ("the 22nd April 2013 letter") the Deputy Governor's Office advised the Applicant's attorneys as follows:

> "*The application submitted by Mr Stevens was rejected as he has a spousal letter but it is not indefinite as it has a stated expiry date. This means he is not considered to be free from immigration restrictions and therefore does not qualify for naturalisation at this time.*
>
> *Mr Stevens is subject to the immigration laws of Bermuda and will qualify to apply after he has been married to a Bermudian for ten years immediately preceding the application*

*and when he is considered to have been free from immigration restrictions for the period of twelve months prior to his application. Based on the information submitted it would appear that he can apply after 16 April, 2021.*"

19. There were two limbs to the reasons set out in the 22nd April 2013 letter. The first limb was the spousal letter. This was a document issued by the Department of Immigration on 6th August 2011. It summarised the Applicant's rights under section 27A of the 1956 Act. Its stated purpose was to facilitate the Applicant's re-entry into Bermuda while he remained married and living with his wife. The letter was expressed to be valid until 6th August 2016. The 22nd April 2013 letter stated that this expiry date was an immigration restriction.

20. This reasoning was wrong in law. The spousal letter did not confer any rights or impose any restrictions upon the Applicant: it merely summarised the rights which he enjoyed irrespective and independent of the letter. The position was summarised by Auld JA in Davis & Davis v Governor & Minister for National Security [2012] Bda LR 40 in the Court of Appeal at paragraph 4:

"*Section 27A does not create machinery for grant of specific permission to enter and reside in Bermuda, ... Section 27A clothes a non-Bermudian man married to a Bermudian woman, with Bermudian status, automatically allowing him to enter and reside here, but only if and only so long as all those conditions are satisfied.*"

21. The second limb is the one on which the Respondents relied before me. The reference in the 22nd April 2013 letter to freedom from immigration restrictions is to section 19A of the 1956 Act. This provides that a person who is a Commonwealth citizen, such as the Applicant, may apply to the Minister for the grant of Bermudian status when they have fulfilled various requirements, including that:

"*for the period of ten years immediately preceding the application the applicant has been married to a spouse who throughout that period possessed Bermudian status*".

22. The reasoning of the second limb was that unless and until the Applicant qualifies for Bermudian status under section 19A of the 1956 Act he will be subject to the requirements of section 27A of the 1956 Act. Those requirements, or so it was reasoned, were "*restrictions under the immigration laws*" within the meaning of Schedule 7(1) of the 1981 Act. This was the basis on which at paragraph 4 of his ruling Kawaley CJ dismissed the leave application:

> "*Section 27A, read in its statutory context, restricts the period for which the Applicant can remain in Bermuda free of Immigration control to such period as he complies with the requirements of subsection (2). To suggest that these conditions do not restrict the period he can remain in Bermuda requires a wholly artificial reading of these clear provisions. Section 27A unambiguously permits the Applicant to remain in Bermuda for an indefinite period which may be brought to an immediate end if any of the circumstances 'prohibited' by subsection (2) occur in relation to him.*"

23. Even if "*restrictions*" has the broad meaning for which the Respondents contend, the reference in the 22nd April 2013 letter to a requirement that the Applicant should be free from immigration restrictions for the period of twelve months prior to his application is incorrect. That is a requirement for an application for BOT citizenship under section 18(1) of the 1981 Act, which was not engaged by the Applicant's application. See paragraph 5(2)(c) of Schedule 1 to the 1981 Act. For an application under section 18(2) of the 1981 Act, the requirement is merely that the applicant should be free from immigration restrictions on the date of the application. See paragraph 7(c) of Schedule 1 to the 1981 Act.

**<u>Discussion</u>**

24. The Applicant submits that paragraph 7(c) to Schedule 1 does not stand alone but falls to be construed in the context of the guidance contained in the Nationality Instructions ("the NI") which have been issued by the Secretary of State and are used by staff of the UK Border Agency ("the Agency") when deciding applications for citizenship.

25. The Agency is an agency of the Home Office. It is responsible for dealing, among other things, with applications for British citizenship and other forms of British nationality, including BOT citizenship.

26. Notwithstanding that they have been issued by the Secretary of State, the NI do not have a statutory basis. They are not, for example, regulations issued by him pursuant to section 41(1) of the 1981 Act. They are nevertheless of assistance in construing the 1981 Act in that they show how it is interpreted by the Agency responsible for its enforcement in the United Kingdom.

27. Volume 1 of the NI is headed "*The British Nationality Act 1981 – caseworking instructions*". It is divided into chapters. Chapter 34 is headed "*Naturalisation at Discretion: Section 18 British Nationality Act 1981*". Paragraph 34.1.6 states:

> "*In considering the exercise of discretion, it is important to look at the case as a whole. Nationality caseworkers need to be sure, before agreeing to waive a requirement, that applicants are of good character and have genuinely thrown in their lot with the British overseas territory concerned. The points which need to be considered are set out in detail in the Annexes to Chapter 18. These should be read with obvious adjustments (e.g. where the context requires, references to the United Kingdom should be read as references to a British overseas territory; British citizenship should be read as British overseas territories citizenship etc).*"

28. Paragraph 34.4.3.1 is headed "*Applications under section 18(2)*". It states that nationality caseworkers should expect to be satisfied that the applicant meets, among other things:

> "*the residence requirements (see Annex B to Chapter 18)*".

29. Chapter 18 is headed "*Naturalisation at Discretion: Section 6 British Nationality Act 198*1". Section 6 of the 1981 Act deals with the acquisition of British citizenship by naturalisation. The requirements for the applicant include that he was not at any time in the period of twelve months ending with the date of his application subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom.

30. Annex B to chapter 18 is headed "*The Residence Requirements*". Paragraph 7 of Annex B is headed "*Immigration time restrictions in the year prior to the application date*". Paragraph 7.1 provides in material part:

> "*All applicants for naturalisation must be* *<u>free of immigration time restrictions</u>* *on the date of application. There is no discretion to waive this requirement. This does not mean that the applicant must have ILE* [Indefinite Leave to Enter] *or ILR* [Indefinite Leave to Remain]. *The following people may also be regarded as meeting this requirement:*
>
> *• people who are not in the United Kingdom (but see 7.3 below)*
>
> *• people who have entered the UK illegally (whether clandestinely, in breach of a deportation order or by their own or another person's deception) and have not been granted limited leave;*
>
> *• people refused leave to remain prior to 2 October 2000 who are not required to leave the United Kingdom by virtue of having immigration appeals pending against those refusals ... ;*
>
> *• people exempt from immigration control under s.8(2), 8(3) or 8(4) of the Immigration Act 1971 (however, those exempt under s.8(3) or 8(4) will be technically absent ...* [Section 8(2) consists of persons or classes of persons exempted by order of the Secretary of State; section 8(3) consists of members of diplomatic missions, their family, household, or others entitled to diplomatic immunity; and section 8(4) consists of members of the home forces and certain other forces.]*;*
>
> *• certain EEA* [European Economic Area] *or Swiss nationals or their family members (see 'EUROPEAN ECONOMIC AREA AND SWISS NATIONALS' in Volume 2)*
>
> *NB. People in the second and third categories mentioned above are, however, in breach of the immigration laws.* [They would therefore be in breach of one of the requirements under Schedule 1 to the 1981 Act for naturalisation under section 6 or section 18 of the 1981 Act.]"
>
> [Emphasis added.]

31. Paragraph 7.2 of Annex B provides:

> "*However, a person is not to be regarded as being free of immigration time restrictions if he or she:*

*• has overstayed a limited leave to enter or remain; or*
*• is on temporary admission; or*
*• is in immigration detention; or*
*• has absconded from temporary admission or detention*".

32. Paragraph 7.3 of Annex B provides:

"*A person who is outside the United Kingdom will necessarily be free, at that time, from any restriction under the immigration laws on the period for which s/he might remain in the United Kingdom. However, it would be contrary to the spirit of the Act to allow an application to succeed where the sole or main purpose in applying from abroad was to circumvent the requirement about freedom from immigration time restrictions – in other words where, had s/he remained in the United Kingdom at the relevant date, the applicant would have failed to qualify because s/he would then have had only a limited leave or conditional right to be in the UK. Any such cases should be referred initially to a SCW to consider whether refusal would be appropriate. When refusing an application on this basis, the following explanation may be offered: 'The Secretary of State is not obliged to naturalise a person who meets the requirements in Schedule 1 to the 1981 Act, and will not normally be prepared to do so if it appears to her that the sole or main purpose in applying from outside the United Kingdom was to circumvent the requirement for the applicant to be free, on the date of application, from any restriction under the immigration laws on the maximum length of his or her stay in the United Kingdom'*".

[Emphasis added.]

33. Paragraph 8 of the paper on "*European Economic Area and Swiss Nationals*" in Volume 2, section 2 of the NI is headed: "*Are persons exercising EEA free movement rights 'subject under the immigration laws to any restriction on the period for which [they] might remain in the United Kingdom'?*" Persons exercising EEA free movement rights include Swiss nationals.

34. The precise answer to that question has changed over time as it is dependent upon the terms of successive statutory instruments. Initially, persons exercising EEA free movement rights were not deemed to be subject to any such restriction under the immigration laws. But that is no longer the case. Under successive Regulations coming into force on 2nd October 2000 and 1st May 2006 respectively, those having (i) an unconditional right of residence

in the United Kingdom under the applicable Regulations, or (ii) a conditional right under the applicable Regulations together with indefinite leave to remain on some other basis, eg leave under the Immigration Act 1971, are to be regarded as resident in the United Kingdom "*without time restrictions*" [emphasis added].

35. Paragraph 9 of the said paper poses the question: should an EEA national who remains in the United Kingdom without a right of residence under Community law, and without leave under the Immigration Act, be regarded as "*subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom*"? The answer given at paragraph 9.1 is: "*Yes*".

36. The Applicant submits that, read in the light of the NI, "*not subject under the immigration laws to any restriction on the period for which he might remain in that territory*" means "*not restricted under the immigration laws to a definite period of time for which he might remain in the United Kingdom*" or, as the case may be, Bermuda. That is my wording rather than the Applicant's, but it captures the gist of his submissions. In light of the guidance at paragraph 9 of the paper on "*European Economic Area and Swiss Nationals*" I would preface this construction with the qualification that it applies "*in the case of a person who is lawfully present in the United Kingdom*": the position may be less straightforward in the case of a person who is not lawfully present there.

37. That apart, I find as a fact that this construction of paragraph 7(c) of Schedule 1 is an accurate statement of how it has hitherto been interpreted in the United Kingdom. It chimes with paragraphs 7(a) and 7(b) of Schedule 1 in that those paragraphs are also concerned with definite periods of time. In reaching this conclusion I have not had the assistance of expert evidence: it would have been helpful to have the benefit of an opinion from a lawyer from the Home Office. The best evidence that I have of how paragraph 7(c) is interpreted in the United Kingdom is therefore the NI, and I am satisfied that the NI speak for themselves. I shall consider below, and as a matter of

statutory interpretation, the construction of paragraph 7(c) in relation to Bermuda.

38. The Respondents make no submissions as to how paragraph 7(c) of Schedule 1 should be construed in the United Kingdom or the relevance to that task of the NI. Rather, they take their cue from section 19 of the 1951 Act and submit that the 1981 Act should be read in such a way as to make it applicable to the circumstances of Bermuda. The NI, it is submitted, are guidance for the benefit of the Agency, a domestic United Kingdom body, and are not applicable in Bermuda. Put another way, they are limited to the local circumstances of the United Kingdom. That being the case, it is submitted, the Court should ignore them, and focus instead on the natural meaning of the words in section 18(2) of the 1981 Act, as expounded by Kawaley CJ in his ruling on the leave application.

39. The Applicant submits that, on the contrary, the 1981 Act should be given a uniform interpretation throughout the territories in which it applies. He relies on Bennion on Statutory Interpretation, Fifth Edition, at 330 – 331:

> "*Where an Act extends to more than one territory the presumption, in the absence of a contrary indication, is that Parliament intended it to operate in the same way throughout the area of its extent. This derives from the principle of equality before the law. A person affected by an Act is not to suffer an increased penalty, or enjoy an increased advantage, just because of the place within the area of the Act's extent where he (or his property) happens to be located.*"

40. The Applicant also relies on a further passage from Bennion on Statutory Interpretation at 333:

> "*Where a British enactment has been adopted in a Commonwealth country, the courts in the United Kingdom will strive to preserve a uniform interpretation. This particularly applies where the subject matter to some extent forms a common system, as with patents or copyright. In relation to Australian and New Zealand decisions on patent legislation, it was said:*
>
>> *'One cannot shut from one's mind the desirability of having a homogenous development of the law in all countries which have adopted our system of patent*

*legislation. That desirability must result in a tendency of our courts to follow these decisions if it is possible to do so.'"* [Footnote: R v Patents Appeal Tribunal, ex p Swift & Co [1962] 2 QB 647, per Lord Parker CJ at 664.]

41. The Applicant submits that, by parity of reasoning, the courts in Bermuda should adopt the same approach and that applications for BOT citizenship form a common system.

42. I agree with the Applicant's submissions that, subject only to any necessary changes, the 1981 Act should be given a uniform interpretation in the United Kingdom and Bermuda. I do not take section 19 of the 1951 Act to suggest otherwise. Neither have I been referred to any other local statutes which suggest that the 1981 Act should be construed differently in Bermuda.

43. It is of course possible that the NI are wrong. But I have heard no submissions to that effect. In any case, as a first instance judge sitting in Bermuda, I should be cautious before making any such finding in relation to guidance issued in the United Kingdom, where the 1981 Act was enacted. In saying this, I bear in mind the principle stated by Carnwath LJ, giving the judgment of the Court of Appeal of England and Wales, in Isle of Anglesey CC v Welsh Ministers [2010] QB 163 at paragraph 43:

"*Where an Act has been interpreted in a particular way without dissent over a long period, those interested should be able to continue to order their affairs on that basis without risk of it being upset by a novel approach. That applies particularly in a relatively esoteric area of the law such as the present, in relation to which cases may rarely come before the courts, and the established practice is the only guide for operators and their advisers*."

44. Although the 1981 Act is more than 30 years old, so far as I am aware[1] there are no reported cases on the construction of paragraph 7(c) of Schedule 1. Thus the established practice of the Agency is the only guide for applicants and their advisors. The Respondents led no evidence as to the established practice, if any, in Bermuda.

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[1] Having researched the matter using Westlaw.

45. There are sound policy reasons for adopting the construction of paragraph 7(c) for which the Applicant contends. However I would have adopted that construction irrespective of those reasons.

46. First, section 19A of the 1956 Act provides that in order for a spouse to apply for the grant of Bermudian status he must be a Commonwealth citizen. Section 3 of the 1956 Act read together with section 37 of the 1981 Act defines "*Commonwealth citizen*" to include "*BOT citizen*". If the interpretation of paragraph 7(c) for which the Respondents contend were correct, a spouse who satisfied all the other requirements of section 19A but was not a Commonwealth citizen, eg a citizen of Portugal, would find himself in a "catch 22" situation: he could not apply for the grant of Bermudian status until he became a Commonwealth citizen, but he could not apply under section 18(2) for BOT citizenship until he was granted Bermudian status. I choose the example of a Portuguese citizen as Bermuda has a large community of Portuguese heritage. The construction of paragraph 7(c) for which the Applicant contends avoids this unfortunate consequence. Although this is not in itself a reason for holding that construction to be correct.

47. Second, section 25 of the 1956 Act provides that it is unlawful for any person other than a person who (a) possesses Bermudian status, (b) who is for the time being a special category person; (c) who is, bona fide, a visitor to Bermuda; or (d) who is a permanent resident; to remain or reside in Bermuda without specific permission of the Minister. All these categories of persons are generally subject to a "*restriction*" under the immigration laws within the meaning of that word for which the Respondents contend in that their residence in Bermuda may be brought to an end if certain circumstances specified by the 1956 Act occur in relation to them.

48. Section 22 of the 1956 Act provides that a person will lose Bermudian status in various circumstances including where he ceases to be a Commonwealth citizen.

49. Section 59(1) of the 1956 Act provides that a person's status as a special category person is dependent upon his occupation. If he ceases to practice that occupation he will cease to be a special category person.

50. Section 28 of the 1956 Act provides that a bona fide visitor must not remain or reside in Bermuda for longer than 6 months, or such lesser period as the Minister may specify. This period is described in section 28 as "*unrestricted*", but it is limited by time and may be terminated by the Minister at will.

51. Section 31D of the 1956 Act provides that a permanent resident's certificate may be revoked in various circumstances including where he is absent from Bermuda for more than two years – other than for the purpose of working for a wholly owned subsidiary or branch, or the parent company, of the company which employed him in Bermuda – without the permission of the Minister.

52. It is therefore hard to see how someone could be present in Bermuda other than for a period, indefinite or otherwise, which may be brought to an end if certain circumstances specified by statute occur in relation to him. If all such persons were held to be subject to a "*restriction*" under the immigration laws, the surprising result would be that no one in Bermuda could ever qualify for BOT citizenship.

**Conclusion**

53. I agree with Kawaley CJ that section 27A of the 1956 Act permits the Applicant to remain in Bermuda for an indefinite period which may be brought to an immediate end if any of the circumstances "*prohibited*" by subsection (2) occur in relation to him. But, in light of the NI, I respectfully disagree that section 27A is a restriction under the immigration laws on the period for which he might remain in Bermuda as, at least in the case of someone lawfully present in Bermuda, "*restriction*" means "*restriction to a definite period of time*". I note that Kawaley CJ was not referred to the NI

when he made his ruling. Had I not been referred to the NI I might have been tempted to agree with him on this point also as his interpretation of paragraph 7(c) is the one that best comports with the ordinary, natural meaning of the statutory language, although the potentially far reaching ramifications of such a broad definition would have been a matter for concern.

54. I find that the Respondents were in error in concluding that the Applicant was not yet eligible to be naturalised as a BOT citizen. I therefore quash their decision refusing his application and direct them to reconsider it. The Respondents have a discretion as to whether or not to grant the application and it is not for me to express a view as to what the outcome of the application should be.

55. I can see no reason to depart from the principle that costs should follow the event. However if any of the parties wishes to address me as to costs I shall hear them.

DATED this 25th day of October, 2013

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Hellman J