In The Supreme Court of Bermuda

CIVIL JURISDICTION

2014: No. 9

IN THE MATTER OF DECISIONS MADE ON OR ABOUT THE 5TH JULY 2013 TO REFUSE BERMUDIAN STATUS (AS CONSOLIDATED BY ORDER OF THE IAT ON 14TH AUGUST 2013)

AND IN THE MATTER OF AN APPEAL RULING OF THE IMMIGRATION APPEAL TRIBUNAL DATED 25TH OCTOBER 2013 (BUT CIRCULATED 20TH DECEMBER 2013)

BETWEEN:-

THE MINISTER FOR HOME AFFAIRS

Appellant

-v-

(1) REBECCA CARNE

(2) ANTONIO CORREIA

Respondents

JUDGMENT SUMMARY ISSUED BY THE SUPREME COURT OF BERMUDA

This summary is provided to assist in understanding the Judgment of the Court. It does not form part of the Judgment. The Judgment itself is the only authoritative document. The full Judgment is available at www.judiciary.gov.bm

1. On May 2, 2014, the Chief Justice dismissed an appeal filed by the Minister against the Immigration Appeal Tribunal's decision of October 25, 2013 directing the Minister to grant applications made by the Respondents for Bermudian status under section 20B(2)(b) of the Bermuda Immigration and Protection Act 1956.

2. The Respondents, both PRC holders, applied for Bermudian status in 2012 under section 20B(2)(b) of the Act, which was initially enacted in 1989. This section requires applicants to meet the following conditions, namely:

a) be a Commonwealth citizen not possessing Bermudian status who has been ordinarily resident in Bermuda since July 1, 1989;

b) be a British Overseas Territories citizen by virtue of a certificate of naturalisation granted by the Governor under the British Nationality Act 1981, "*having been approved for the grant of Bermudian status*";

c) be at least 18 years of age;

d) have been resident in Bermuda for 10 years immediately preceding the application;

e) have no convictions for offences of moral turpitude;

f) be suitable, in terms of character and previous conduct, in the opinion of the Minister, for the grant of Bermudian status.

3. No applications had been made under this section for a number of years and the Ministry had no published forms or procedures for making such applications. The only requirement which the Respondents did not meet was that they obtained their naturalisation certificates without "*having been approved for the grant of Bermudian status*". The Minister refused their applications for Bermudian status on the sole ground that they had failed to comply with the statutory requirement to obtain pre-approval for the grant of status when they applied to the Governor to be naturalised as British overseas territories citizens. The Respondents appealed this refusal to the Immigration Appeal Tribunal.

4. The Immigration Appeal Tribunal allowed the appeals against the Minister's decision and directed the Minister to grant the applications for Bermudian status. The Tribunal ruled that the pre-approval requirement made no sense and should be ignored. It also took into account the fact that once the Respondents became naturalised as British Overseas Territories citizens, interpreting the Act in a way which deprived them of equal citizenship rights such as the right to vote as Bermudian status holders would be inconsistent with the equal citizenship rights protected by article 25 of the International Covenant on Civil and Political Rights.

5. The Minister appealed against the Tribunal's decision on three grounds:

a) the Tribunal erred in finding that the Minister did not have the right to pre-approve applications for naturalisation that were made for the purposes applications for status under section 20B(2)(b) of the Act. The Minister argued that the words "*having been approved for the grant of Bermudian status*" should not be ignored;

b) article 25 of the International Covenant on Civil and Political Rights had no bearing on the appeal;

c) the decision directing the Minister to grant the status applications should be set aside.

6. At the hearing of the Minister's appeal before the Supreme Court, the Minister did not contend that persons such as the Respondents were not entitled to apply for and be granted Bermudian status, if they met the requirements of section 20B(2)(b) as summarised in paragraph 2 above. The main focus of the appeal was on two issues:

(a) whether persons applying under the section had to obtain pre-approval for status from the Minister before obtaining certificates of naturalisation; and

(b) if pre-approval was required, what legal consequences flowed from a failure to obtain pre-approval in circumstances where all other qualifying conditions had been met?

7. The Supreme Court held as follows:

a) section 20B(2)(b) does require persons applying for Bermudian status under that subsection to obtain pre-approval from the Minister as part of the process of obtaining their naturalisation certificates form the Governor. The Minister's case on how the section should be interpreted was correct;

b) there was some ambiguity or doubt about what Parliament intended to be the consequences of a failure to follow the correct procedure should be. The Court decided that Parliament cannot have intended purely procedural defects to automatically disqualify applicants who had become 'Bermudian citizens' through naturalisation from obtaining Bermudian status;

c) on the facts of the present case, where no published procedure even existed, and the Respondents were admittedly otherwise qualified for the grant of status, it was obvious that the Respondents' failure to obtain pre-approval for Bermudian status could not constitute valid grounds for refusing their applications. The Tribunal was accordingly correct to direct the Minister to grant the applications for Bermudian status.

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2 May 2014