

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

CLAIM NO. NEVHCV 2010/0042

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
AND
IN THE MATTER OF THE IMMIGRATION ACT

BETWEEN

SANTOS CALDERON PEREZ

1st Applicant/Intended Claimant

MIQUELINA PIMENTEL GUMBS

2nd Applicant/Intended Claimant

and

THE MINISTER OF NATIONAL SECURITY & IMMIGRATION

1st Respondent/Intended Defendant

THE NEVIS ISLAND ADMINISTRATION

2nd Respondent/Intended Defendant

THE ATTORNEY GENERAL OF ST. KITTS & NEVIS

3rd Respondent/Intended Defendant

Appearances:

Mr. Perry Joseph and Ms. Midge Morton for the Applicants/Intended Claimants.

Mr. Arudrannauth Gossai for the 1st and 3rd Respondents.

Dr. Henry Browne for the 2nd Respondent.

2010: April 16;

November 09.

JUDGMENT

Introduction

[1] LEIGERTWOOD-OCTAVE J: Santos Calderon Perez and Miquelina Pimentel Gumbs [“the Applicants”] are husband and wife. They are both nationals of the Dominican Republic, who have

been living on the island of Nevis from about the year 2000. Over the years, Mr. Perez has held various business licences and work permits and the Applicants have operated a beauty salon and barbershop since 2001. They have raised a family with their three minor children being born on the island.

- [2] In January 2010, the Applicants applied for and were granted the renewal of their work permits for the period ending 31st December 2010. The Permanent Secretary in the Premier's Ministry of the Nevis Island Administration wrote to Mr. Perez on 3rd March 2010 informing him that the work permits issued to him and his wife had been revoked with immediate effect.
- [3] The Applicants alleged that on 12th March 2010, officers of the Royal St. Kitts and Nevis Police Force requested that they attend the Charlestown Police Station, where they were asked to confirm that they had tickets to leave the island the following day, failing which they would be detained and deported from the island. The Applicants' attorneys brought the matter attention to the Minister of National Security and Immigration [**"the Minister"**] in a letter of the same date.
- [4] Also on 12th March 2010, on an without notice application, the court granted an interim injunction restraining the Minister, the Nevis Island Administration [**"the NIA"**] and the Attorney General of St. Kitts and Nevis [**"the Attorney General"**] from arresting, detaining or deporting the Applicants. The Applicants were ordered to file an application for leave to bring Judicial Review proceedings within seven days. At the inter partes hearing on the return date, the injunction was continued until the determination of the application for leave. The Application for leave to bring Judicial Review proceedings was filed on 24th March 2010. It was supported by an affidavit by the First Applicant, with several exhibits attached. The Respondents have opposed the Application.

The Law

- [5] The power of judicial review may be defined as the jurisdiction of superior courts to review laws, decisions, acts and omissions of public authorities in order to ensure that they act within their given powers¹.

¹ Commonwealth Caribbean Public Law 2nd ed. Cavendish Publishing Limited at page 15

[6] In our jurisdiction, judicial review proceedings are governed by **Part 56** of the **Eastern Caribbean Supreme Court Civil Procedure Rules 2000** and applications for leave to make a claim for judicial review are dealt with in **Rule 56.3**.

[7] The authorities have established certain principles governing these types of applications:

- 1) The test to be applied is whether the court is satisfied on the material before it that there is an arguable [not potentially arguable] ground for judicial review, which has a realistic prospect of success²;
- 2) The test is to be applied flexibly³;
- 3) The court does not go into the matter in any depth at the leave stage⁴;
- 4) Leave will not be granted where the material before the court only discloses what might on further consideration turn out to be an arguable case⁵;
- 5) Leave will not be granted where continuing the proceedings would not serve any practical purpose⁶.

The Revocation of the Work Permits

[8] In judicial review, the court is very often concerned with limited public law grounds which may be deployed in order to complain about a particular decision or decisions⁷. In this case, the Applicants are complaining about the revocation of their work permits.

[9] Mr. Gossai argued quite strenuously that the power to revoke a work permit rests with the Minister in accordance with **section 17[6] [b]** of the **Immigration Act**⁸ and it is one which the section clearly states can be exercised "at any time". He further argued on the authority of the **Minister of Immigration et al v Sharon Nettlefield et al**⁹ that when the Minister acted under **section 17[6][b]** he was exercising an executive power and not a judicial power and his decision was not amenable to judicial review.

[10] In relation to the revocation of the Applicants' work permits, I think it is necessary to reproduce the entire contents of the Permanent Secretary's letter of 3rd March 2010:

² *Sharma v Brown-Antoine and Ors.* [2007] 1WLR 780 at para. 14[4]

³ *Ibid*

⁴ *R v IRC ex parte National Federation* [1982] AC 617 at 644

⁵ *Ibid*

⁶ *Doloswala & Anor, R [on the application of] v Secretary of State for the Home Department* [2009] EWHC 2918 (Admin)

⁷ *Ibid.*

⁸ Cap. 6.02 of the Laws of Saint Christopher and Nevis [Revised Edition 2002]

⁹ Grenada Unreported Civil Appeal No. 6 of 2002 at pages 9 and 14

" ...

Dear Mr. Calderon-Perez

Kindly be informed that your request that work permits on behalf of Maria Masareya Reyes Puero and Alexander Arrendondo Diaz, which were granted for the period 01 November to 31 December, 2009 be transferred to the period 01 January to 31 December, 2010 has not been approved.

Furthermore, please be advised that the work permits issued to you, Santos Calderon Perez and your wife Miquelina Pimentel Gumbs are hereby revoked with immediate effect.

Yours sincerely

*Angelica Elliot
Permanent Secretary*

*Pc Chief Labour Officer
Immigration Officer
Manager, Social Security [Nevis]"*

- [11] In his affidavit Mr. Perez stated that his attorneys sent a letter to the Minister after they received the letter from the Permanent Secretary but there had been no response from the Minister. The Minister is not otherwise mentioned in relation to the revocation of the work permits.
- [12] I should mention that Mr. Perez also stated that he had been informed orally that his business licence would not be renewed for 2010. I mention it only to say that I have not considered it at all as no other details were given.

FINDINGS

- [13] I think it appropriate to deal with my findings in relation to the Minister first. **Section 17[6][b]** of the Act makes it indisputably clear that the Minister can revoke a work permit entirely within his discretion. As is similarly the case in England, our courts do not take decisions under the Immigration Acts. Parliament has conferred that role on the Secretary of State¹⁰ in England and on the Minister of Immigration in our jurisdiction and the courts cannot usurp those functions.

¹⁰ *Doloswala & Anor, R [on the application of] v Secretary of State for the Home Department [2009] EWHC 2918 (Admin)*

[14] The problem with this case is that there is nothing to suggest that the Minister did in fact exercise his power under section 17[6][b] and revoke the Applicants' work permits. Mr. Joseph has not convinced me otherwise in his arguments. There is no decision of the Minister that the Applicants can complain of, in fact none has been alluded to.

[15] If there is no decision of the Minister to complain about, I am therefore not able to identify any appropriate issue on which the case against the Minister can properly proceed. I hold a similar view in relation to the Attorney General. This is one of those cases where continuing against those parties would not serve any practical purpose¹¹. I must agree with Mr. Gossai that the relief sought against both of them are wholly misconceived.

[16] With regard to the Nevis Island Administration, everything revolves around the Permanent Secretary's letter of 3rd March 2010 where she informed the Applicants that their work permits had been revoked. That is the most significant material that the court must consider in applying the test enunciated in **Sharma v Browne-Antoine and Ors**¹².

[17] Can the Applicants rely on that letter to satisfy the court that they have an arguable ground for judicial review which has a realistic prospect of success? I think that by relying on Mr. Gossai's submissions, Dr. Browne who acts for the Nevis Island Administration has assisted in answering that question. The crux of Mr. Gossai's argument was that the power to revoke work permits rests with the Minister under the Act. There has been no submission that any other person or authority has that power.

[18] Without going any further into the matter, I am satisfied that the letter raises two arguable grounds:

- 1) Did the letter from the Nevis Island Administration amount to a revocation of the Applicants' work permits?
- 2) Did the Nevis Island Administration act within its power by issuing that letter?

Both grounds have a realistic prospect for success, the very law on which the Nevis Island Administration has relied suggests such an outcome.

¹¹Doloswala & Anor, R [on the application of] v Secretary of State for the Home Department [2009] EWHC 2918 (Admin)

¹² Supra

[19] It is therefore my view that the Applicants have satisfied the **Sharma** test and ought to be granted leave to bring a claim for judicial review against the Nevis Island Administration.

ORDER

[20] In light of my findings at paragraphs [13], [14], [17], [18], I make the following orders:

- 1) Leave is granted to the Applicants to apply for an Order of Certiorari to quash the purported decision of the Nevis Island Administration contained in a letter dated the 3rd of March 2010, revoking the work permits of the Applicants which were duly granted to the Applicants on the 15th day of January 2010 pursuant to the Immigration Act No. 10 of 2002.
- 2) Leave is granted to the Applicants to apply for a Declaration that the Nevis Island Administration acted in breach of the Immigration Act 2002 and therefore acted unlawfully.
- 3) Leave is conditional on the Applicants making a claim for judicial review within fourteen days of today's date.
- 4) The Applicants are refused leave to bring a claim for judicial review against the Minister of National Security and Immigration.
- 5) The Applicants are refused leave to bring a claim for judicial review against the Attorney General of St. Kitts and Nevis.
- 6) The Nevis Island Administration is restrained from deporting or otherwise affecting the immigration status of the Applicants until further order.
- 7) There is no order as to costs.

Ianthea Leigertwood-Octave
High Court Judge