

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



CLAIM NO. NEVHCV2010/0042

BETWEEN:

SANTOS CALDERON PEREZ
MIQUELINA PIMENTEL GUMBS
and

1st Applicant
2nd Applicant

THE MINISTER OF NATIONAL SECURITY
& IMMIGRATION

1st Respondent/Defendant

THE NEVIS ISLAND ADMINISTRATION

2nd Respondent/Defendant

THE ATTORNEY GENERAL OF ST. KITTS
& NEVIS

3rd Respondent/Defendant

Appearances: Mr. Perry Joseph for Applicants and Miss. Midge Morton with him

Dr. Henry Browne on record for 2nd Respondent

2011 May 17, 27 June

JUDGMENT

- [1] REDHEAD J (ag) – This matter first came before me for hearing on 14th February, 2011. When the matter was called up, neither counsel for the Respondents nor the Respondents were present in court.

- [2] The matter was called up again for hearing, 17th May, 2011, neither Dr. Browne nor any of the Respondents was present in court.
- [3] Mr. Joseph, counsel for the applicants informed the court that he called Dr. Browne's office and spoke to his secretary who told him that Dr. Browne had a matter in Antigua.
- [4] The Nevis Court office was in receipt of a letter the same morning of trial dated 16th May, 2011 from Dr. Browne's office apparently signed by Dr. Browne's secretary.
- [5] The letter was to the effect that Dr. Browne was in Antigua before the Court of Appeal seeking a request and that all matters in which he was involved should be adjourned.
- [6] I am compelled to say that I am very much disappointed with the action or non-action of Dr. Browne in this matter.
- [7] I have worked with Dr. Browne for many years when I was at the Bar and have always regarded him as having the utmost respect for the Court. I have not heard further from him or any reason why he was unable to attend the hearing of the matter much earlier long before the scheduled date of the hearing. I say no more on this issue.
- [8] This is an application for judicial review of a decision taken by the defendants to revoke "with immediate effect" the work permits issued to the applicants by letters dated 3 March 2010.

The letter states as follows:

Mr. Santos Calderon Perez

Manager/Owner

Chamaco Barber Shop

Main Street

Dear Mr. Calderon-Perez,

Kindly be informed that your request that your work permits on behalf of Maria Masareya Reyes 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 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.

[9] An affidavit was deposed to by Santos Calderon Perez on behalf of himself and his wife and filed on 24th March 2010. None was filed on behalf of the respondents.

[10] Mr. Joseph, learned counsel for the Claimants rightly contended that the facts before me are therefore not in dispute.

- [11] In his affidavit Mr. Perez swore that he and his wife are both Nationals of the Dominican Republic.
- [12] On 12th February, 1999 he travelled to the Island of Nevis. His wife later joined him in Nevis. At the time, he swore he was 39 years old and his wife 26 years old.
- [13] From 2000 up to the present time – up to the time of the purported revocation of the work permits – he and his wife had been the holders of valid work permits issued by the Nevis Island Administration allowing him and his wife to reside in the Federation.
- [14] He and his wife have three minor children all born in the Island of Nevis. They were at the time 8 years, 5 years and 4 months.
- [15] At that time the 8 year and 5 years old attended the St.Johns Primary School. His children speak English and Spanish and so do he and his wife and they are well integrated in the Nevisian Society for well over a decade.
- [16] Mr. Perez deposed that from or about 2001 he and his wife have been the owner of a beauty salon and barbershop situated in the Howell Building, Main Street, Charlestown, Nevis. From 2001, various business licences have been issued to him allowing him and his wife to operate the said business. Copies of these were exhibited.

- [17] The Claimants' business is called "Chamaco's Beauty Salon". The Claimants have from time to time engaged and employed other persons in the salon on average, a total of about six employees.
- [18] Mr. Perez swore that he has made his various contributions to the St. Kitts and Nevis Social Security Board (Copies of receipts of payments are exhibited).
- [19] In or about 2008 – 2009, Mr. Perez sold his motor car and purchased a Nissan Murano Sports Utility Vehicle from Mr. Kevin Huggins, an authorized motor vehicle dealer for EC\$65,000.
- [20] To enable him to purchase the vehicle, RBTT Bank (SKN) Ltd advanced the sum of \$65,000.00 according to Mr. Perez.
- [21] In March 2010, he was owing the sum of \$53,995.06 on the loan. He was repaying \$1480 on the loan. Mr. Perez is the holder of a Master Credit Card from Bank of Nova Scotia and is indebted to that Bank in the sum of \$16,310.48.
- [22] Mr. Perez, his wife and children live in rented accommodation at Bath Village. They pay monthly rent of \$650. They also pay a monthly rent of \$1300 in respect to the Howell Building where they carry out their business.

- [23] Mr. Perez is also indebted to TDC rentals in the sum of \$1803.61. Mr. Perez swore that he is involved in various social activities on the island including a membership with a local baseball club.
- [24] On or about 15th January the applicants made application for the renewal of work permits for the year 2010. The work permits were subsequently issued by the 2nd named Respondent to the Claimants for the year ending 31st December 2010.
- [25] By letter dated 3rd March 2010, the Claimants were advised by letter from the Permanent Secretary in the Premier's Ministry that their work permits issued to them in or about 15th January had been revoked.
- [26] The respondents had not given any reasons for revoking the applicants' work permits. On Friday 12th March members of the Royal St. Christopher and Nevis Police Force visited the business place of the Claimants and requested them to report to the Charlestown Police Station.
- [27] The Claimants reported to the police station as requested. Mr. Perez was asked to confirm that their tickets to leave the island the next day had already been purchased, alternatively, they would be detained by the police and deported from the island.
- [28] Mr. Perez deposed that he is not aware that any deportation order was made against him and his wife under the Immigration Act.

[29] Mr. Perez swore that as a result he instructed his attorneys to seek an injunction restraining the respondents and their agents including the police from arresting, detaining or otherwise deporting or affecting their immigration.

[30] By letter dated 12 March 2010, his solicitor Mr. Mark Brantley wrote to the Minister of National Security and Immigration imploring him to immediately direct his attention to the matter involving Perez and his wife. To date, the 1st respondent has not responded to his solicitor's letter.

The letter in part reads as follows:

Dear Mr. Condor,

Re: Santos Calderon Perez

“On or about the 15th day of January 2010, our client was issued with his usual work permit from the Nevis Island Administration for the period ending 31st December, 2010 and paid the necessary fee therefor.

Suddenly by letter dated March 3, our client was advised that his work permit for 2010 which had already been stamped in his passport had been revoked. No reason whatsoever had been given for the revocation of our clients' work permit.

In addition to the revocation of the work permit, our client has been verbally advised that his business licence will not be renewed for 2010.

Again, no reason had been proffered. As a consequence we have been further instructed that the immigration authorities operating on the island of Nevis have been directed to take the passport of our client, cancel his immigration status on the island and thereby make him liable to deportation. We can find no authority for so doing under the Immigration Act 2002.

We are deeply concerned at this callous and entirely unlawful treatment of Mr. Perez. So far as we are aware, he is a person of good character who had abided by all the law, rules and regulations of St. Kitts and Nevis. He has his business here, his family here including 3 small children, ages 8 years, 5 years, and 3 months all born in Nevis and therefore citizens of St. Kitts and Nevis. He has made his life here for over 10 years. Mr. Perez has done nothing wrong and indeed no such allegation has been made against him.

It seems a gross abuse of governmental power to summarily and without good reason revoke a person's work permit and legal status on the island and render him liable to deportation. This is wrong both legally and morally and must concern you as the responsible minister. It is also unclear as to who might have directed the Immigration Officials in Nevis to attend upon Mr. Perez for purpose of cancelling his status when

Immigration matters lie squarely within your purview as the responsible minister.

We draw these matters to your attention formally and ask your urgent intervention as minister to prevent this gross violation of the rights of our client. In the interim, we are prepared to take this matter to the High Court as we consider it a most alarming precedent which leaves no immigrant in St. Kitts and Nevis safe from such abuses of governmental power.

We invite your urgent response and would be obliged to hear from you by 4pm today barring which we shall have to seek the urgent intervention of the Court and our costs for doing so.

Yours respectfully,

Mark A. Brantley

Partner

Daniel, Brantley & Associates

Cc: Honourable Attorney General

Honourable Joseph Parry”

- [31] Mr. Perez in his affidavit said that on 12th March 2010, the Court heard an ex parte application for an interim injunction and granted an order restraining the respondents.
- [32] Mr. Perez swore that since the situation arose, his wife, himself and their children have suffered from anxiety and depression.
- [33] They have lived on the island of Nevis for over a decade and have been entrenched in the society. They have numerous commitments – financial and otherwise in this country to various innocent third parties.
- [34] Their children are nationals thereof. If they are forceably removed from the country, their lives would change dramatically and they would in fact face great hardship and detriment. In addition, if they are removed from this island in circumstances suggested by the respondents, various innocent third parties rights would be affected or impacted negatively.
- [35] Additionally, the purported decision to revoke the work permits seeks to deny him and his wife their only means of livelihood available to them in this country – which therefore affects the lives of their children who are nationals of this country.

[36] In their written submission, Learned Counsel for the applicants referred to the Immigration Acts 17[6]¹ which gives the minister the power to revoke a work permit.

The subsection provides:

“The minister may at any time, revoke a work permit”. The minister here is the Minister of Immigration.

[37] This discretionary power given to the Minister of Immigration to revoke one’s work permit cannot be exercised capriciously. That discretion, if it is to be exercised, must be exercised fairly and reasonably on the **Wednesburg Principles (See Associated Provincial Picture Houses – Wednesburg Corporation)**².

[38] Learned Counsel for the applicants argued that the Claimants are resident on the island for tax purposes and have fulfilled their fiscal obligation thereto.

[39] Learned Counsel also contended that the Claimants rent a space in Charlestown where they operate their business. They also rent their dwelling house. They are also indebted to various financial institutions on the island including TDC Rentals (Nevis) Ltd, RBTT Bank and Bank of Nova Scotia. They have made contributions to the commercial life of the island and have had the same career from the time of their arrival on the island.

[40] Moreover, I am of the view that the Claimants at the time of the purported revocation were entitled to become permanent residents.

¹ CAP 6.02 Laws of St. Christopher and Nevis

² 1948 1 k B 223, 233-234

[41] The Immigration Act St. Christopher and Nevis (Supra) Section 6 provides as follows:

6(1) For the purpose of the Act there shall be the following classes of residents,
that is to say;

(a) Permanent residents

(2) For the purposes of subsection

(i) The following persons may, on application made to the Minister, in the prescribed form be granted permission to become permanent residents in Saint Christopher and Nevis, that is to say:

(a) persons who

(i) have been resident in Saint Christopher and Nevis for at least seven years...”

[42] The Claimants have been resident in Nevis for over 10 years. Learned Counsel for the Claimants challenged the revocation of the work permits on the ground that only the Minister of Immigration has the authority to revoke a work permit.

[43] By Section 17(6) the Minister has the authority to revoke the appellants work permit. Learned Counsel argued that although certain powers are given to the Nevis Island Assembly under the Constitution of Saint Christopher and Nevis³, the no.1 defendant has no specific power to deal with the issue of immigration.

³ Section 106

[44] Learned Counsel for the applicants contended that the Minister of Immigration has the authority to issue or revoke work permits. However, from the letter sent to Mr. Perez on 3 March 2010, it seems that the Minister of Immigration was not involved in the decision but it is not at all clear. It is possible, in my opinion that they could have been acting as the conduit of the Minister of Immigration.

[45] Learned Counsel submitted that the decision to revoke the work permits of the applicants – granted just a few weeks prior to their revocation – having been granted the same work permits for over a decade seems to have been made with some bad faith and unreasonableness having regard to the fact that the Claimants status remained the same (that is to say law abiding residents).

[46] This is exacerbated by the fact that the police then demanded the applicants to leave island immediately failing which they would be deported even without a deportation order, argued Learned Counsel for the applicants.

[47] Learned Counsel contended that it is the revocation of the said permits such revocation being unreasonable and in bad faith that formed the basis of the actions of the police as agents of the defendant and acting on their authority, to attempt to forceably remove the Claimants from the island contrary to the Act as there was no Deportation Order in place.

[48] Dr. Browne, Learned Counsel for the no. 2 Respondent in his skeleton arguments submitted that the Constitution of St. Christopher and Nevis⁴ confers upon the Nevis Island Legislature full and exclusive power to enact legislation with respect to certain specified matters and exclusive responsibility for the administration within the island of Nevis in accordance with the provisions of any relevant laws, a number of matters. Two of the matters are “the employment of persons [in Nevis] who are not citizens and the subject matter of “Labour”.

[49] Dr. Browne further argued that the power to Legislate exclusively on certain matters conferred by the Constitution on the Nevis Island Legislature. Schedule 5 item [11] of the Constitution: “Employment of persons who are not citizens”. It is common ground that applicants are not citizens, so argued Dr. Browne.

[50] Dr. Browne submitted that the conjoint effect of Schedule 5 item [11] of the Constitution and Section 106 of the Constitution is to give plenitude of legislative and administrative power over all aspects of “Employment of persons who are not citizens” and “Labour” to the Nevis Island Legislature and the Nevis Island Administration respectively. Thus there can be legal justification in seeking to deny the Nevis Government capacity to grant, vary or revoke work permits with respect to persons who are not citizens of St.Kitts and Nevis.

[51] I accept without reservation the submission of Dr. Browne as outlined, in my view, in his brilliant Constitutional analysis. There can be no argument or challenge therefore that the Nevis Island Administration has the power and capacity to vary grant, or revoke work

⁴ S 100

permits of non-citizens. It seems therefore that the Nevis Island Administration is vested with the same power in this regard as the Minister of Immigration, if the latter is not a member of the Nevis Island Administration.

[52] I do not think for one minute that a challenge to that issue can succeed. What I am concerned with is the manner of or execution of that power in relation to the Claimants.

[53] Dr. Browne contended that it is settled law that on the authority of Minister of Immigration et al v Sharon Nettlefield et al⁵ that when the Minister acted under the counterpart of S.17 (6) (b) [Supra] he was exercising a executive power and not a judicial power and his decision was non-amendable to judicial review.

[54] In that case in considering Sections 27, 35 of the Immigration Act of Grenada. I said, “No appeal shall lie against an order made by the Minister under the authority of Sections 25, 26, 27 or 28 unless such appeal is directed to the question of identity only, of the person affected by the order”.

[55] Nettlefield’s case [Supra] concerned a deportation order made by the Minister of National Security against the two appellants who were deemed undesirable persons, taken into custody and subsequently deported. The deportation order was made on 17th August 2001.

⁵ Civil Appeal Grenada

- [56] On 17th August 2001, the same day as the deportation order, the matter was brought before Sylvester J. who made an order on the same date that the Respondents should be released forthwith.
- [57] When the matter went back before Sylvester J. it was discovered that the Respondents were deported from Grenada on 8th August, 2001.
- [58] The matter came on for a full hearing before Sylvester J. on 19th December 2001. In his written judgment he held inter alia that the Respondents were entitled to the protection of the Constitution of Grenada – although they were non-nationals – they could not lawfully be deported without being given a hearing in keeping with the principles of natural justice.
- [59] The learned judge also held that the Respondents had a legitimate expectation that they would be entitled to remain in Grenada to operate their business and if it became necessary to remove them then they would have been afforded a fair hearing.
- [60] In order to appreciate and have a full understanding of Nettlefield's case, it is, in my opinion necessary to give some background facts of that case.
- [61] The Respondents were non-nationals of Grenada. They arrived in Grenada as visitors on 22nd June, 1998. Four days before the expiration of their stay, on 2nd July 1998, they

made application for an extension and was granted such extension until 2nd September 1998.

[62] During the period of their extension the Respondents applied for and obtained work permits surreptitiously from the Labour Commissioner.

[63] I make the observation that the Respondents were in possession of work permits for a mere 2 years and 11 months at most – work permits which were obtained surreptitiously.

[64] Learned Counsel for the Claimants in the case at bar argued - that the defendants in granting work permits to the Claimants over a ten year period and subsequently work permits for the period January to December 2010 give rise to a legitimate expectation in their favour that they were entitled to be heard prior to making any decision which would adversely affect them.

[65] Learned Counsel for the Claimants argued that based on the rules of natural justice, the denial of the right to be heard is sufficient to render the purported decision to revoke the Claimants work permit null and void. Learned Counsel in support of that submission referred to: R v Secretary of State for Home Department ex parte Fayed⁶ Lord Woolf at page 237 said “the decisions of the Minister are therefore classically one which would involve an obligation on the Minister making the decision to give the Fayed and opportunity to be heard before the decision was reached”.

⁶ [1997] 1 ALL ER 228

[66] Learned Counsel for the Claimants also referred to: The Chief Immigration Officer v Roger Burnett⁷. At page 21 Satronon Singh J.A opined: The issue in this appeal is not whether the Executive of the Government of Tortola, the Minister of Immigration or the Chief Immigration Officer had the statutory power to refuse the respondent entry into the territory. The real question in controversy between the parties is whether the respondent had a legitimate expectation that the statutory power would not be used before he was given an opportunity to be heard in accordance with the Audi Alterem Partem rule.

[67] At page 24 Sir Vincent Florssac C.J. said: “In my judgment the failure on the part of the Minister of Immigration and the Chief Immigration Officer to give the said notice and the opportunity to the respondent was a breach of the “audi alterem partem” rule of natural justice and a procedural irregularity which nullified the refusal of permission for the respondent to enter the territory.

[68] Dr. Browne submitted that,

“the exercise of its power to grant, vary or revoke work permits, the Nevis Island Administration is not performing a judicial or quasi judicial function. The function is an executive one and the 2nd named respondent respectfully submits that no judge may interfere with the exercise of that power unless it is shown that the Nevis Island Administration exceeded its power given to it under the Constitution. In any event the work permits have expired without more. And the 2nd named Respondent trusts that the Applicants have not continued to work. This could attract serious

⁷ Civil Appeal No. 7 of 1994 B.V.I.

consequences (See Minister of Immigration v Sharon Nettleford Supra)". I reject the submission by Dr. Browne.

See also *Annamunthodo v Oil Workers Trade Union*⁸

[69] In my judgment the Claimants having being granted work permits for the past ten years. They have three children born in Nevis. They are Nevisians. The claimants have acquired rights and obligations. Mr. Perez owns a motor vehicle. They are obligated to financial institutions in Nevis.

[70] In light of the foregoing, this places on the 2nd defendant, not only a legitimate expectation that the Claimants would be heard, before a decision is taken to revoke their work permits but also a legitimate expectation that the work permits would not be revoked except for compelling reasons and in exceptional circumstances.

[71] The 2nd defendant having revoked the Claimants work permits for no reason; because in my view if the defendants had a legitimate reason for so doing, it would have been expressed. In my judgment, the second named defendant acted in bad faith because having granted the Claimants a work permit on 15th January, 2010 for the year ending December purported to revoke the work permits, by 31 March 2010 without any legal justifiable reasons.

[72] The failure of the 2nd named defendant to give an opportunity to the Claimants to be heard before revoking their work permits was a breach of the audi alterem partem rule of

⁸ 1960 2 with 73

natural justice and a procedural irregularity which nullified the revocation of the Claimants' work permit. The revocation of the Claimants work permits are therefore null and void.

[73] The Claimants are entitled to damages. The second defendant acted oppressively towards the Claimants in having them brought to the Charlestown Police Station by the police and threatening them with Deportation.

[74] **In Cassell and Co. Ltd v Browne and another**⁹, it was held the first category of cases in which exemplary damages may be awarded i.e. cases of oppressive, arbitrary or unconstitutional action by servants of the government, should not be limited to servants of the government in the strict sense of the word but should be extended to others, such as local government officials or the police, who may be described as exercising governmental functions (per Lord Hailsham of St.Marylebone LC, Lord Reid, Lord Diplock and Lord Kilbrandon).

[75] The Claimants are entitled to damages for loss of employment for 3 March 2010 to present and exemplary damages to be assessed by a judge of the High Court on date to be fixed by the Registrar of the High Court.

⁹ 1972 1 ALL ER p 801 at 803

[76] Costs to the Claimants on a Prescribed Costs basis.

Albert Redhead

A handwritten signature in black ink, appearing to read 'A. Redhead', written over a horizontal dotted line.

High Court Judge