In The Supreme Court of Bermuda

CIVIL JURISDICTION
2025: 254

BETWEEN:-

JOHNNY LIMA CONSTRUCTION LTD
Applicant

- and -

THE MINISTER OF ECONOMY AND LABOUR
Respondent

- and -

THE OFFICE OF THE ATTORNEY GENERAL
First Interested Party

- and -

LUIS F ARAUJO BRAGA
Second Interested Party

RULING

Date of Hearing: **4 February 2026**
Ruling Delivered: **10 April 2026**

Appearances: ***Hon. Mark Pettingill*, Chancery Legal Ltd, for the Applicant**
***Lauren Sadler-Best*, Deputy Solicitor-General, for the Respondent**

HEADNOTE

The Applicant's claim for judicial review fails. The Respondent's evidence explains the decisions challenged. No illegality has been shown. The Applicant's complaints about the weight given to matters by the Respondent do not demonstrate illegality.

RULING of AJ Southey KC

Introduction

1. This is a challenge to a decision dated 26 June 2025 to refuse the 2nd Interested Party a work permit. It also challenges consequential decisions to require the 2nd Interested Party to leave Bermuda and prohibiting him applying for a work permit for 1 year. The factual background to these decisions is set out below.

2. I would like to thank the parties for the manner in which they conducted the litigation.

Factual background

3. The Applicant is a construction company that specialises in the building of high-end houses and properties in Bermuda. The evidence of Johnny Lima, the Applicant's owner, states that the Applicant employs 16 individuals of which 9 are Bermudian and it will usually have 3 projects that are under construction at any one time.

4. Mr Lima states that, because of the nature of the projects undertaken by the Applicant, it is very important that its employees are all highly skilled in their respective trade. Where possible he will always look to employ a Bermudian for any vacant role that the Applicant has available. However, often he will find that there are either no applications from Bermudians or a Bermudian who applies will not meet the qualification/skill requirements of the role.

5. Mr Luis F Araujo Braga, the 2nd Interested Party, is a Portuguese national.

6. On 18 September 2023, Mr Braga was granted a 1-year work permit. That work permit had effect from 19 September 2023 to 19 September 2024. The work permit was granted to enable Mr Braga to work for the Applicant as a mason. Until the grant of the work permit, the Applicant had been resident with his wife and children in the Azores. He states that he emigrated to Bermuda with his family in order to improve his family's living conditions and economic circumstances.

7. The work permit expired on 19 September 2024 without an application having been made for an extension. The Applicant blames an immigration consultancy, Wright Consulting,

for that. It is essentially claimed that the Applicant reasonably relied on Wright Consulting to make the application. The witness statement of Johnny Lima filed on behalf of the Applicant states that:

I recall the company being made aware by employees of the Department of Immigration that it was advisable the company make use of an immigration agent to facilitate immigration applications by the business due to the complexities of the work permit application process, my company therefore acted on this advice … [8]

It is also said that use of Wright Consulting demonstrates that the Applicant was supporting Bermudian business.

8. In response to the grant of leave, the Respondent has filed an affidavit sworn by Dr Danette Ming, the Chief Immigration Officer. This states that:

   … the Department does not take a position on the use of immigration agents. Many businesses choose to engage such service providers and they do so entirely at their own risk. [7]

   Dr Ming points to the Work Permit Policy. It provided at the material time that:

   Employers are to ensure that work permit holders comply with all the terms of their work permit.

   The Applicant accepts that it is not the policy of the Immigration Department to encourage the use of agents. However, it argues that as a matter of fact, the use of agents is viewed positively.

9. On 13 December 2024 the Applicant requested an update from Wright Consulting. It was informed that no application had been made. The Applicant immediately stopped Mr Braga from working. This is a matter that the Applicant places significant weight on. It is said that this demonstrates that the Applicant was seeking to comply with its legal obligations.

10. An application was finally submitted on 20 March 2025 by Wright Consulting. In that application, Wright Consulting accepted that it was responsible for the late submission of the work permit application.

11. The application for a work permit was refused on 30 May 2025. The decision letter stated that:

    … this notice hereby serves to advise you that it is the intent of the Minister of Economy and Labour to consider making an order directing that Mr. Araujo Braga settle his affairs and leave Bermuda.

You are therefore invited to respond to the Department of Immigration ***<u>within fourteen (14) days</u>*** *from receipt of this notice in respect of the information above.* [Emphasis in the original]

The Respondent argues that it was unnecessary to seek representations. That maybe correct but I am unclear where it takes the Respondent. The Respondent sought representations and subsequently considered them.

12. The affidavit sworn by Dr Ming sets out reasons for the decision taken on 30 May 2025. It states that:

    The grant of a work permit is a discretionary grant. In this regard, the Minister considered the applicable law and Policy as well as all the facts available to him and the arguments made on the Applicant's behalf. These include <u>the assertion that the tardiness of the application was not the fault of the Applicant</u> or Mr. Braga, the need expressed by the Applicant for qualified masons and Mr. Braga's personal circumstances. In considering the application, the Minister was, appropriately concerned not just with the timing of the application but also with whether Mr. Braga had ceased working when he was legally required to do so. The fact that he did not do so and that he in fact continued working for a number of months without permission, was a factor that the Minister took seriously and he was entitled to do so. On the totality of the information before him, the Minister considered that the appropriate decision was to refuse the application. [Emphasis added]

13. It appears to me that the emphasised words in the paragraph above are important. The use of the word 'assertion' suggests that no finding was made as to whether the agent was responsible for the delay in submitting the application. That is consistent with the argument in the Respondent's skeleton that the law of agency made clear that the Applicant was responsible for the failings of its agent. Ms Sadler-Best for the Respondent accepted that the position of the Respondent was that it did not need to determine whether the agent was to blame.

14. On 2 June 2025 the Applicant was advised by Wright Consulting that a letter had been issued regarding the work permit application. The Applicant apparently believed that this letter confirmed the grant of a work permit. Despite this, counsel for the Applicant told me that Mr Braga did not start work. I have seen no evidence that confirms this. In any event, I fail to see how a misapprehension about the terms of a decision letter assists.

15. On 9 June 2025 representations were made against the refusal of the work permit. This was by way of a letter that set out details of Mr Braga's personal circumstances as well as the Applicant's need to employ Mr Braga. Orally it was argued that the Applicant and Mr Braga had no role in the drafting of that letter. I do not accept that. Mr Lima's witness statement states that:

I genuinely believed that her letter was simply in support of the application and that it would be a matter of time only before my [sic] Braga would have a new work permit.

That suggests an awareness of the letter but uncertainty about its purpose. However, it also appears to me that awareness of the letter is not relevant to any issue that I have to decide. The letter appears to me to set out key matters that the Applicant now relies on.

16. The representations were rejected in a letter dated 26 June 2025. The decision letter stated that:

    I am directed to inform you that after carefully considering the facts, the Minister has upheld his refusal to the request for Johnny Lima Construction Ltd. employ Mr. Araujo Braga for one year as a Mason. As a result Mr. Araujo Braga is hereby directed to settle his affairs and leave Bermuda ***on or before 1st August 2025****.*

    In addition, the Minister further instructs that the Department will not consider any work permits for one (1) year from the date of Mr. Aruajo Braga's departure. [Emphasis in the original]

    The letter did not engage with the specific issues raised on behalf of the Applicant in the letter dated 9 June 2025.

17. The affidavit sworn by Danette Ming states that:

    The Minister carefully considered the arguments put forward on behalf of the Applicant and Mr. Braga in the 9 June letter and determined that the appropriate decision was to uphold the refusal.

18. The witness statement of Mr Lima states:

    ... Government and the Respondent repeatedly acknowledge the need to support Bermudians, Bermudian Business and the need to increase the workforce, yet the refusal of Mr Braga's work permit severely impacts a local Bermudian business and therefore Bermuda more generally.

    A number of political statements are quoted in support of this statement. These include at least one statement in Parliament. One news report that was specifically relied on stated that:

    Jason Hayward, the Minister of the Economy and Labour, said that existing rules – including stiff fines for organisations that submit applications late – would be enforced.

19. Mr Lima also states that:

Losing a key employee is severely impacting my company's ability to attend to these various contracts which in turn will have a wider impact on Bermuda and the Bermudian economy.

20. On 14 July 2025 the Applicant's lawyers sent a letter before action.

21. On 16 July 2025 the Department of Immigration sent a letter to Mr Braga saying that he must leave Bermuda by 14 October 2025. Mr Braga's evidence is that his wife and family are likely to be required to leave Bermuda if he leaves.

22. On 28 July 2025 the Attorney General was informed that the Applicant had advertised in an attempt to recruit a mason. No suitable applicants had been found.

23. By way of a form 86A dated 7 October 2025 the Applicant issued this judicial review application. The relief sought in the form 86A states that the relief sought, among other matters, is:

2. A Declaratory Order that the decision by the Respondent to refuse a work permit application for Mr Luis F. Araujo Braga pursuant to the Bermuda Immigration and Protection Act 1956 was <u>procedurally unlawful, unreasonable and unfair</u>;
3. A Declaratory Order that the decision by the Respondent to impose conditions on when Mr Luis F. Araujo Braga may resubmit a work permit application pursuant to the Bermuda Immigration and Protection Act 1956 was <u>procedurally unlawful, unreasonable and unfair</u>
… [Emphasis added]

The grounds upon which relief is sought are said to be:
1. The Respondent erred in law and/or fact in refusing the work permit application for Mr Luis F. Araujo Braga.
2. The Respondent has acted contrary to the principles of natural justice and contrary to Chapter 1 Section 1 of the Bermuda Constitution Order 1968 in failing to duly consider Mr Luis F. Araujo Braga's right to a family life in refusing the work permit application and further failing to consider the impact of the work permit on the family of Mr Luis F. Araujo Braga.

24. Leave was granted to apply for judicial review on 13 October 2025. An order was also issued preventing the removal of Mr Braga until the judicial review proceedings were determined. That interim relief did not enable Mr Braga to work. It has been pointed out that he has been unable to work for over a year.

Arguments

25. I have summarised below the parties written and oral arguments. I have had the opportunity to consider the arguments with care. I have addressed a number of the arguments in my

reasoning. Any failure to expressly reference a matter relied on in evidence or argument does not mean that I have not considered it.

26. The Applicant's skeleton argument expands on the grounds set out in the form 86A and argues, among other things, that:

    a. An authority has a duty in assessing the facts of a particular circumstance to consider the appropriate action in light of the totality of the evidence, thus introducing the test of proportionality in assessing whether a decision has been reached in a rational or irrational manner. It is argued that the Respondent erred by concluding that he did not have to consider fully the Applicant's arguments or 'weigh the appropriateness or reasonableness of the action that he exercises in his discretion' [12].
    b. Statutory powers have to be exercised to promote the policy and objects of the legislation. By analogy, the Respondent seems to be of the view that the punishment does not have to fit the crime as long as the punishment falls within his discretion. It was submitted that this simply as a matter of law cannot be right.
    c. The Applicant is of good character in the sense that it:
    ... has no history or record of past infringements with the immigration authority that would warrant them being placed in a category of having an antecedent history which reasonably demands a higher level of punishment [20].

27. Orally it was said on behalf of the Applicant that it was important to consider the issues through a local Bermuda lens. For example, it was submitted that statements demonstrate a local policy of enforcing immigration rules with fines. More generally, it was said that repeated statements had been made about the importance of work permits to the local economy.

28. The Applicant also argued that when assessing Dr Ming's evidence, I must take account of the fact that Dr Ming was not the decision maker.

29. The Respondent's skeleton argument argues, among other things, that:

    Given the Minister's wide discretion in this area, and in all the circumstances, it is submitted that the Applicant has failed to show that the Minister's decision was in any way unlawful or flawed. In the circumstances, the application should be dismissed.

30. Orally it was said on behalf of the Respondent that weight could be placed on Dr Ming's evidence. That was not least because it is a corporate statement. More generally, it was argued that the threshold for irrationality is high. It was argued that Applicant was essentially inviting the Court to substitute its own views for those of the Respondent.

Law

Statutory framework governing work permits

31. Section 25(1) of the Bermuda Immigration and Protection Act 1956 ('the 1956 Act') states that:

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.

32. Section 60(1) of the 1956 Act requires someone in the position of Mr Braga to obtain permission from the Minister to work.

33. Section 61(4) of the 1956 Act states that:

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.

34. Section 61(6) of the 1956 Act states that:

The Minister may either withhold permission or grant permission subject to any duration, condition or limitation, without assigning any reason for that decision.

Duties of employers in relation to work permits

35. Section 61(1A) of the 1956 Act provides that:

Any such application [for a work permit] 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.

36. At the material time, clause 4.1 of the Work Permit Policy provided that:

If an employer intends to continue to employ a work permit holder in the same job beyond the expiry date of the current work permit, they must apply for a new permit. The same process that was followed to obtain the original permit must be followed again. Applications should be submitted no less than one (1) month and no more than three (3) months prior to expiration of the current work permit ...

Provided that the employer has submitted a complete application within the time frame specified in this policy, the incumbent may continue working beyond the expiry of the work permit in the event that the work permit expires while their new application is still pending. If the complete application is not submitted within the time frame specified, the employee must stop working unless specifically authorised by the Minister. Note: A Short Term Work Permit cannot be applied for in these circumstances

37. In *Abdulla Al Mansur v Secretary of State for the Home Department* [2018] UKUT 00274 (IAC) Lane J held that:

As a general matter, poor legal advice in the immigration field will have no correlation with the relevant public interest. The weight that would otherwise need to be given to the maintenance of effective immigration controls is not to be reduced just because there happen to be immigration advisers who offer poor advice and other services. Consequently, a person who takes advice to do X when doing Y might have produced a more favourable outcome will normally have to live with the consequences. [30]

The facts of the present case are, however, strikingly different. The OISC decision shows that IWP did not give the appellant poor advice. The organisation blatantly failed to follow the appellant's specific instructions regarding the timing of the withdrawal of the application for permission to appeal. That failure was the sole reason why the appellant's application for leave fell to be treated as invalid. [31]

The conclusions of the OISC investigation are highly material in determining whether this really is a rare case in which the misfeasance of a legal adviser can affect the weight to be given to the public interest in maintaining an effective system of immigration control. The OISC findings are clear and categorical. The position is far removed from that which we frequently see in this jurisdiction, where legal advisers are belatedly blamed but where

there has been no admission of guilt and no finding of culpability by a relevant professional regulator. [32]

It should be noted that *Mansur* was concerned with an alleged violation of the European Convention on Human Rights. That means that it was for Tribunal in *Mansur* to decide for itself whether there was compliance with the Convention (*Miss Behavin' Ltd v Belfast City Council* [2007] NI 89 at [31]).

Approach of the Court to judicial review applications

38. The burden is on an applicant to demonstrate an error of law (*Standard Commercial Property Securities Ltd v Glasgow City Council* 2007 SC (HL) 33 at [61]). Consistent with this, it was held by the Court of Appeal in *Marks v Minister of Home Affairs* BM 1985 CA 1 that:

    … one should not assume mala fides on the part of the Minister merely because the decision was adverse to the applicant. The presumption of regularity applies and one should assume that the power was exercised bona fide within the bounds fixed by law and in compliance with it unless it is otherwise demonstrated.

39. In *Singh v Secretary of State for the Home Department* [2018] EWCA Civ 2861 the English Court of Appeal held that:

    … it is the rule that where there is a dispute on the evidence in a judicial review application, the facts stated in the defendant's evidence will be accepted unless there has been an application to cross-examine the relevant witness or the evidence "cannot be correct". [16]

40. It has become accepted practice that public authorities can rely on corporate statements in judicial review. However, such statements must comply with relevant rules of evidence including identifying the sources of evidence (*Attorney-General v BBC* [2025] EWHC 1669 (KB) at [97], [99] and [103]).

41. In *Bell v Attorney General* [2021] SC (Bda) 43 Civ Hargun CJ commented that:

    The Court can only interfere with a decision if there have been material procedural irregularities or the decision is wrong as a matter of law, which would include a decision which is Wednesbury unreasonable. As correctly submitted on behalf of the Attorney General, where the matter is brought by way of judicial review "the functions of the Court are much more restricted than in an appeal from an administrative decision…
    Judicial review is not concerned with the merits of the decision in respect of which the application is made, but with the process of decision-making itself" [71]

42. Consistent with *Bell*, in *R (Sainsbury's Supermarket Ltd) v Wolverhampton City Council* [2011] 1 AC 437 Lord Mance held that:

… the question of what is a material (or relevant) consideration is a question of law, but the weight to be given to it is a matter for the decision-maker. [70]

43. The statement that what is a material (or relevant) consideration is a question of law does not mean it is always for the Court to decide whether a consideration is relevant. Courts can decide whether legislation imposes a duty to consider a consideration (whether expressly or by implication). However, where there is no legal duty to consider a consideration, a failure to consider it will only be unlawful if it is unreasonable (*R (Friends of the Earth Ltd) v Secretary of State for Transport* [2021] PTSR 190 at [120]). In *Friends of the Earth Ltd* it was noted that:

    … a decision-maker may in fact turn their mind to a particular consideration … but decide to give the consideration no weight. … The question … is whether the decision-maker acts rationally in doing so. [121]

44. In *Marks v Minister of Home Affairs* BM 1985 CA 1, 26 March 1985, Summerfield JA noted that when considering a judicial review of a work permit decision:

    A court must keep firmly in mind that the legislature has vested the power and discretion in the Minister to be exercised within the bounds set by law. The decision is the Minister's and he is answerable ultimately to parliament for it, whether right or wrong - not the courts. In exercising judicial review the courts have a limited function, namely, to determine whether it is apparent that those bounds have not been observed or whether there has otherwise been some transgression of the law or the rules of natural justice. A court should not stray outside that sphere.

45. *R (Association of British Civilian Internees: Far East Region) v Secretary of State for Defence* [2003] QB 1397 decides that *Wednesbury* rather than proportionality continues to be applied in public law (at least until this reviewed at Privy Council level) [35].

46. Clear statements can give rise to a legitimate expectation that must be honoured. However, in general, such statements must be made by someone authorised to make them (*R (Bloggs 61) v Secretary of State for the Home Department* [2003] 1 WLR 2724 at [43]).

47. Section 7A(1) of the 1956 Act provides that

    A grant to a person shall not, except to the extent, if any, expressed in the grant, confer upon him any right, or ground or support any hope, claim or expectation which he may assert—
    (a)to or of any extension or renewal of the right or rights expressed in the grant; or
    (b) to or of the award of any right or rights other than the right or rights so expressed.

    In *Re Haynes* [2008] Bda LR 75 it was held that this provision ousts 'the public law doctrine of legitimate expectation' [16].

48. Consistent with section 7A(1) of the 1956, in it was held by the Court of Appeal in *Marks* that:

It must also be remembered that an applicant has no right to a renewal of his permission to engage in gainful occupation. The grant of such permission is a privilege conferred on him. In refusing to grant extension the Minister is not depriving the applicant of any right. He is merely declining to confer a further privilege - the privilege of being permitted to engage in gainful occupation for an additional specified period.

49. In *R (All the Citizens) v Secretary of State for Digital, Culture, Media and Sport and another* [2022] 1 WLR 3748:

… public law has not reached the stage at which all administrative policies have become enforceable as a matter of law. Policies come in various forms and their content is wide-ranging. Some policies, such as those in the present context, are essentially inward facing and govern the way in which a public authority will conduct its own affairs. They do not concern the exercise of public powers. [102]

… the kind of policy which will be enforceable as a matter of public law (unless there is good reason to depart from it) should, in principle, be the kind of policy which the Supreme Court had in mind in R (Friends of the Earth Ltd) v Secretary of State for Transport[2021] PTSR 190, in particular at paras 105–107 (Lord Hodge DPSC and Lord Sales JSC). As they said there, the epitome of "Government policy" is a formal written statement of established policy. One reason for this is that civil servants and others must be able to identify the policy which is said to be legally enforceable quickly and conveniently. It is important in this context that there should be legal certainty. [115]

Conclusions

50. When considering the decision of the Respondent, it is important to remember the role of a judicial review judge. As was made clear in *Bell*, my role is not to retake the decisions challenged. It is to determine whether the decision of the Respondent was unlawful. In considering the legality of the Respondent's decision, I need to remember that the 1956 Act makes clear that decisions regarding work permits are for the Respondent (*Marks*). It is the Respondent who is politically accountable for work permit decisions and not me.

51. I have made the point in the paragraph above because it appears to me that at times the Applicant has essentially sought to argue about the merits of the decision. For example, it is essentially said that greater weight should be given to the failings of Wright Consulting. However, weight is not a matter for me unless the weight given to a factor is irrational (*Sainsbury's Supermarket Ltd*). Deciding what weight should be given to matters such as the failings of Wright Consulting would involve me retaking the work permit decision.

52. Similarly, the Applicant's skeleton argument stated that:

... it was clearly open to the Minister to consider a lesser penalty of finding the Applicant because of the failure of the agent to act in a timely manner.

It appears to me that this statement is correct but irrelevant unless it was open to me to retake the decisions challenged. That is because it was for the Respondent to decide how much weight to give firm immigration control (*Friends of the Earth Ltd*). The mere fact that an approach was open to the Respondent does not mean that there was a legal obligation to adopt that approach. Similarly, the Applicant argues that any penalty must be proportionate. However, the assessment of what is proportionate is a matter for the Respondent.

53. The decision letter dated 26 June 2025 did not engage with the matters put forward in the representations dated 9 June 2025 as being reasons why a work permit should be issued. That, however, is not challenged. It appears to me that there is good reason for there being no challenge to a lack of reasons. Section 61(6) of the 1956 Act makes it clear that there is no duty to provide reasons. As a consequence, the absence of reasons in the decision letter appears to me to be of no legal significance.

54. It appears to me that there is no basis for me not accepting the evidence of Dr Ming. The burden was on the Applicant to demonstrate illegality (*Standard Commercial Property Securities Ltd*). That implies that it was necessary for the Applicant to undermine the evidence of Dr Ming about the decision-making if it was to be rejected. The Applicant made no application to cross-examine Dr Ming and this is not a case where the evidence cannot be correct (*Singh*). That means that the evidence of Dr Ming was not undermined. It is true that Dr Ming was not the decision maker. However, corporate witness statements/evidence can be relied on (*Attorney-General v BBC*). Indeed, it might be said that a review of the decisions challenged by the Chief Immigration Officer was a benefit from the point of the view of the Applicant. Any review would have ensured that the decision was not aberrant.

55. The affidavit of Dr Ming states that careful consideration was given to the representations but the decision to refuse a work permit was maintained. It was essentially said that the Respondent was concerned about the timing of the application and the fact that the Applicant continued working when he was not entitled to. These appear to me to be matters that the Respondent was entitled to consider. Section 61(4) of the 1956 Act gives the Respondent a broad discretion to determine work permit applications. A non-exhaustive list of relevant factors are provided. Among those factors is 'the requirements of the community as a whole'. It appears to me that it is open to the Respondent to conclude that compliance with immigration control is in the interests of the community and so comes within the express relevant factors. Even if that is wrong, as already noted, section 61(4) permits the Respondent to consider matters that are not expressly listed in section 61(4). Consideration of matters such as the timing of the application and the fact that the Applicant continued working when he was not entitled to would only be unlawful if it was unreasonable (*Friends of the Earth Ltd*). It appears to me that there is no basis for concluding that it is irrational to take account of these factors. In fairness to the Applicant, I did not understand it to argue

that the Respondent had taken account of irrelevant factors when taking the decisions challenged.

56. The Applicant's arguments appeared to me to essentially boil down to the weight (or lack of it) given to the failings of Wright Consulting and/or the statements that there is a public interest in granting work permits to people who can contribute to the Bermudian economy. As already noted, issues of weight are matters for the Respondent (*Sainsbury's Supermarket Ltd*). The Applicant's skeleton argument suggested reliance on proportionality. It appears to me that there is no basis for relying on proportionality. Proportionality is generally only the correct approach if human rights are in issue. The issue in this case is simply whether the Respondent's decisions regarding the weight to be attached to various considerations was unreasonable (*Association of British Civilian Internees: Far East Region*). That means that conclusions about weight will only be set aside if they are unreasonable.

57. It appears to me that the Respondent was entitled to conclude that it did not need to consider whether Wright Consulting was to blame for the failure to make a prompt work permit application. It appears to me that the decision to ignore any failings of Wright Consulting was not unreasonable in light of the following matters:

   a. The terms of section 61(1A) of the 1956 Act are clear that employers are responsible for applying for work permits. Further, if there were any doubt about the meaning of section 61(1A), clause 4.1 of the Work Permit Policy makes it clear that employers are required to submit in time applications. That suggests that a failure to submit an application in time can be given significant weight whether or not an agent was responsible. That is because ultimately the employer was legally responsible.
   b. I accept that the evidence suggests that Wright Consulting was responsible for the failure to apply in time for an extension of the work permit. However, that does not mean that the Respondent was bound to overlook the failure of the Applicant to comply with its legal obligations identified in sub-paragraph a. As noted above, it is for the Respondent to decide whether any failures of Wright Consulting are a relevant factor and what weight to give to them (subject to the requirement that the Respondent must act reasonably). It appears to me that *Mansur* can be distinguished. It was decided in a context in which the court was determining whether there had been a breach of the European Convention on Human Rights and not merely whether a decision was reasonable. As a consequence, it was for the court in *Mansur* to decide what weight to give to matters. In this case I am deciding whether the approach of the Respondent was unreasonable. In addition, this is a context where there was a duty on the employer to ensure that there was compliance with the relevant immigration rules.
   c. On the evidence, it may have been that the Applicant believed that it could rely on Wright Consulting. However, there is no reason to believe that any statements made by people working for the Department of Immigration encouraging the use of agents and/or Wright Consulting were made by people authorised to bind the Department of Immigration. There is no detail as to who made any statements about reliance on agents and what precisely they said. As a consequence, there was no legitimate expectation

that the normal policy of requiring employers to ensure compliance with work permit rules would not apply (*Bloggs 61*).

d. I accept that the Applicant was supporting a Bermudian business by using Wright Consulting. I do not see how this is legally relevant. The legal obligations imposed on the Applicant do not depend upon whether it uses Bermudian or foreign agents.

58. I have also considered whether the approach of the Respondent to the public interest was irrational in light of the various statements acknowledging a public interest in granting work permits. It appears to me that the approach was not unreasonable in light of the following matters:

a. The statements are all expressed in general terms. They do not say how applications should be decided in a particular case. For example, the statement made by Mr Hayward about fines does not say that fines will be the only way that immigration rules will be enforced. It was accepted on behalf of the Applicant that it was not said that fines were the only way that immigration rules would be enforced. It appears to me that the statements are not policy statements that might be said to be enforceable applying the approach in *All the Citizens*. They are not directed towards how decisions must be taken in individual cases.
b. I am also concerned that at least one of the statements may attract Parliamentary privilege. However, I have heard no argument about this and so reach no findings regarding it.
c. The balance to be struck between the benefits of immigration to the economy and the need to enforce immigration control is a matter of political judgment for the Respondent. This Court can only intervene if the conclusions of the Respondent are unreasonable.
d. I recognise that statutory powers must be exercised consistently with the purpose of those powers. However, I cannot see how that assists the Applicant's arguments. The relevant provisions of the 1956 Act are intended to enable the Respondent to restrict foreign nationals working in Bermuda. The decisions challenged were consistent with this purpose.

59. The Applicant also sought to rely on the fact of the previous grant of a work permit. It appears to me that this carries little weight. Section 7A(1) of the 1956 Act makes it clear that there is no legitimate expectation that a work permit will continue. That is consistent with *Marks*. It appears to me that the Respondent did not act unlawfully by not giving weight to this factor.

Conclusions

60. In light of the matters above, I have concluded that I must dismiss this claim for judicial review. I should emphasise that is because I have concluded that the decisions challenged that were taken a number of months ago are lawful. However, to some extent things may have moved on. Mr Braga has now remained in Bermuda without having been able to work.

It may be that, in light of the passage of time, it is open to him to seek a variation of the decisions regarding departure and the period before he can apply again for a work permit. I express no view about the merits of an application for a variation of the previous decision. The decision as to whether to vary the previous decisions is a matter for the Respondent.

Dated this 10th day of April 2026

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HON. MR. ASSISTANT JUSTICE HUGH SOUTHEY KC
ASSISTANT JUDGE OF THE SUPREME COURT