

**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
ANTIGUA AND BARBUDA**

**CLAIM NO. ANUHCV2009/0608**

**IN THE MATTER of sections 114 of The Antigua and  
Barbuda Consultation Order 1981**

**IN THE MATTER of The Antigua and Barbuda Citizenship Act**

**IN THE MATTER of the Immigration and Passport Act**

**IN THE MATTER of an application for leave for Judicial Review**

**IN THE MATTER of an application for an Administrative Order**

**ORIGINATING MOTION**

**BETWEEN:**

**Clive Oliveira**

**Claimant**

**-and-**

**THE ATTORNEY GENERAL**

**Defendant**

**Appearances:**

**Dr. David Dorset for the Claimant/Applicant**

**The Hon. Attorney General Mr. Justin Simon Q.C. and with him Ms. Luann De Costa for the Defendant**

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**2010: 14, June**

**2010: 12, October**  
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**JUDGMENT**

1. **Harris, J.:** The Claimant is a Citizen and native of Guyana and was married to his wife in the land of his Nativity in the Hindu East Indian tradition on 21<sup>st</sup> October 1991. The Claimant and his wife

subsequently migrated to Antigua and Barbuda and on 23<sup>rd</sup> October 1997 the Claimant was again married to his wife and was duly issued a marriage certificate.

2. On 30<sup>th</sup> September 2002 the Claimant's wife was registered as a citizen of Antigua and Barbuda pursuant of section 114(1)(c) (ii) of the Antigua and Barbuda Constitution.
3. In April 2009 the Claimant applied to the Passport Office to be registered as a citizen of Antigua and Barbuda pursuant to s114 (1)(b)(i) of the Antigua and Barbuda Constitution on the ground that he is married to a citizen of Antigua and Barbuda and that his marriage is subsisting for upwards of three years. The Claimant's application was supported by:
  1. Proof of his identity by means of his passport,
  2. Proof that his wife is a Citizen of Antigua and Barbuda by means of her Antigua and Barbuda passport and her Certificate of Registration as a Citizen OF Antigua and Barbuda, and
  3. Proof of his marriage to his wife by means of a marriage Certificate indicating that he was married to her as of 23<sup>rd</sup> October 1997, such date being of a greater period than three (3) years prior to his application for registration as a citizen.
4. The Claimant says that he expected that upon his application and proof of eligibility pursuant to s114 (1) (b) (i) of the Constitution of Antigua and Barbuda that he would be promptly registered. Contrary to his expectation, the Claimant was advised by the Passport Office to visit the Immigration Department on 1<sup>st</sup> May 2009. The Claimant was afterwards directed to return on 11<sup>th</sup> November 2010 for an interview.
5. As a non-Citizen the Claimant is prohibited from engaging in Lawful employment within the State and in fact has been unemployed. He had written no less than three letters to the immigration Department requesting the regularization of his status so that he could obtain lawful employment.<sup>1</sup> The fact relating to the circumstances relating to the Claimant's Immigration status, including the State's unlawful seizure of the Claimant's Passport for an extended period notwithstanding a Court Order to the effect, are fully described in a Judgment of this Court in ANHUCV 2008/0449, *Clive*

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<sup>1</sup> See pages 41-43 of the Trial Bundle.

*Oliveira v The Attorney General and the Chief Immigration Officer.* (see pages 16-33 of the Trial Bundle, and in particular paragraphs [85]-[88] of the Judgment).

6. The Claimant claims the following constitutional and Judicial review remedies:
  1. A declaration that the right of the Claimant for registration as a Citizen of Antigua and Barbuda as provided for by s114(1)(b)(i) of the Antigua and Barbuda Constitution Order 1981 has been contravened.
  2. A mandatory order required the Government of Antigua and Barbuda by their proper servants, agents, or officers, to register the Claimant as a Citizen as provided by Law and by virtue of section 114(1)(b)(i) of the Antigua and Barbuda Constitution Order 1981.
  3. Damages, including vindicatory damages and exemplary damages, pursuant to section 119(3) of Antigua and Barbuda Constitutional Order 1981, for breach of the Claimant's Constitutional rights as provided for under section 114(1) (b) of the Constitution.
  4. Damages for distress and inconvenience, pursuant to section 119(3) of the Antigua and Barbuda Constitution Order 1981, for breach of the Claimant's Constitutional rights as provided for under section 114(1)(b) of the Constitution.
  5. Damages flowing from the inability of the Claimant to work whilst being denied his Citizenship status.
  6. Costs.
  7. Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act;
  8. Interest pursuant to s7 of the Judgment Act.
  9. Any other relief that the Court deems fit.
7. The Defendant contends that there has been no decision to deny the Claimant's application to be registered as a Citizen. The Defendant contends that the Claimants must subject himself to an interview and investigation process, which in his instance has occasioned a delay of at least 20 months from the time of his application for registration as a Citizen.
8. The Defendant submits that no decision has taken to deny citizenship to the Claimant that consequently there is nothing to review and that the Claimant's claim and application for constitutional relief and judicial review is premature.

9. The Defendant's submission, it is submitted by the Claimant, cannot be sustained. He says that the **CPR 56.1(3)** provides that the term "judicial review" includes the remedies (whether by way of writ or Order) of "*mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case*". The Claimant's seeks a mandatory order (i.e., an order of mandamus) requiring the State to perform its public duty of registering him as a Citizen, as the decision to register him as a Citizen is one for which the Constitution grants the State no discretion.
  
10. The Claimant submits that the issues that fall to be considered are:
  1. Has the Claimant satisfied the requirements for registration as a Citizen upon application pursuant to s114(1)(b)(i) of the Constitution, that is, a right to be registered on account to being married to a Citizen of Antigua and Barbuda for more than three years?
  2. Is there a discretion to refuse (or delay) the grant of Citizenship in the instant case?
  3. Is the right to Citizenship being delayed by attention to irrelevant considerations?
  4. Is the delay in granting Citizenship unreasonable and oppressive and if so what are the appropriate remedies?

### **THE CLAIMANTS CASE<sup>2</sup>**

11. The claimant case is at its core; that the delay in the interview process and subsequent grant of citizenship is tantamount to a decision not to grant the citizenship and a breach of the applicant/claimants right to citizenship under the constitution. Counsel for the claimant argues that the interview process with the immigration department, which requires the submission and consideration of a myriad documents and concerns unrelated to the constitutional requirements for citizenship, is a fetter on the grant of the constitutional right of the claimant; a fetter the state is not entitled to impose on the grant of that right to citizenship by virtue of marriage. The claimant submits that he has qualified for registration for citizenship upon application, under s.114 (1) (b)(i) of the Constitution of Antigua and Barbuda. He contends that the Constitution is clear, "*the following persons shall be entitled, upon making application, to be registered.*" He points out that it

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<sup>2</sup> This is a substantial reproduction of the Claimant's statement of case and written submissions filed in this matter.

provides that one such category of persons so entitled is the spouse of a citizen of the state with a marriage subsisting of at least three years.

13. The claimant is married to a citizen of the state for more than three years. He claims proof of that fact is uncontroverted. He claims that the state has not alleged that his identity is in doubt neither have they alleged that the identity of his wife, length of marriage to the claimant, nor her citizenship status is in question. The claimant's right to be registered as a citizen has not at this stage been denied.

14. The claimant further contends that there is no discretion of the state to refuse or delay the registration of the citizenship. His contention is that no Public Authority has the right to fetter the constitutional right of the Claimant. Counsel for the claimant cites Barrow JA in the civil appeal Noel v The Attorney General and the Minister responsible for Citizenship, Civil Appeal No. 11 pf 2006, 13<sup>th</sup> November 2007 at para 14:

*"I accept that there is no discretion in the minister to refuse an application that is properly made: see Application by Kareem Abdulghani and Neilson v Baker. I also accept that **Where there is a constitutional right, the duty of the authority concerned is to verify that the preconditions for claiming the right exists but the authority has no discretion to fetter the right** [emphasis supplied]; see Electrotec Services Ltd. v Lisa Nicholas (Grenada) Ltd.*

15. Section 114(1) of the constitution states in language plain and clear that the Claimant is entitled to registration as a citizen "upon making application". As it relates to construing constitutional provisions, the Privy Council in DeFrietas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing [1999] AC 69 at 75F but the matter very succinctly:

*"[I]n construing constitutional provisions a liberal approach is required".*

16. Counsel for the claimant submits that the words "upon making application" are plain ordinary words. The Concise Oxford English Dictionary defines "upon" as a preposition that is a more formal term for **ON**. "On", as preposition, is inter alia, defined by the Concise Oxford English Dictionary as "at the time of". It is respectfully submitted that adopting a liberal approach to construction, and consistent with the ordinary English meaning, the words "upon making application" means "on making application", that is, "at the time of making application". The

Claimant, provided he has properly applied, is entitled to be registered at the time of the application. His entitlement cannot be the subject of inordinate delay, such as 20 months in the instant case.

17. Given that the Claimant is entitled to be registered, as provided by the Constitution, there is a corresponding duty on the part of the State to register the Claimant. There is no provision in the Constitution permitting a delay in the registration of a qualified applicant. The State must comply forthwith with its constitutional duty. The Constitution provision is clear says counsel for the claimant and the duty is absolute. There can be no alienation of this duty which must be promptly discharged. The absolute nature of the duty makes any action, administrative arrangement, agreement or policy that interferes with the due discharge of its duty unlawful and impermissible.
18. The Defendant's basic position is that no decision has been made to deny the Claimant's application and in any event the relevant governmental authorities are abiding by an established procedure as it regards processing the Claimant's application. It is submitted by the claimant that the state cannot escape its obligation to perform its Constitutional duty by seeking refuge behind (i) lack of resources or (ii) an administrative arrangement where the one department of Government is dependent on another and this dependency disables another department from performing its duty in a timely manner or at all. Lack of resources and administrative arrangements are not relevant considerations excusing the State from performing its constitutional duty. The claimant contends that the constitutional duty to register a qualified applicant as a citizen cannot be reduced to a discretionary power subject to the vagaries of the executive or the legislature as to where and how the resources of the State are to be allocated.
19. Lord Brown-Wilkinson, speaking for the House of Lords in *R v East Sussex Country Council, ex p Tandy* [1998] AC 714 at 749 was emphatic that the lack of resources cannot excuse the non-performance of statutory duties:

*To permit a local authority to avoid performing a statutory duty on the grounds that it prefers to spend the money in other ways is to downgrade a statutory duty to a discretionary power.....Parliament has chosen to impose a statutory duty, as opposed to a power, requiring the local authority to do certain things. In my judgment the Court*

*should be slow to downgrade such duties into what are, in effect, mere discretions over which the Court would have very little real control. If Parliament wishes to reduce public expenditure on meeting the needs of sick children then it is up to Parliament so to provide. It is not for the Court to adjust the order of priorities as between statutory duties and statutory discretions.*

20. In the instant case, the claimant states that the Constitution of Antigua and Barbuda, the supreme Law of the land, has granted the Claimant a right to be registered as a citizen upon application. This he says, imposes a duty on the state to register the Claimant once he meets the constitutional requirements for registration. The duty to register the Claimant as a citizen cannot be downgraded to a privilege to be granted when it is convenient for the State so to do. If there is to be a dilution in the State's duty to register than can that can only be attained by constitutional amendment.
21. In sum, counsel for the claimant submits that s.114 (1) (b) of the Constitution does not afford the public authority responsible for registering the Claimant, a discretion to refuse or delay (undue delay amounting to refusal) registration, once application has been properly made, any such refusal or delay being a fetter on The Claimant's constitutional right. The delay in registering the Claimant has the effect of frustrating the legislative purpose, namely, the purpose of s114 (1) of the Constitution. The Constitution does not give the State a license of frustrate the purpose of the Constitution, or to use the words of Barrow JA in *Noel v The Attorney General and the Minister responsible for Citizenship*, "*where there is a constitutional right.... there is no discretion to fetter the right*". It is respectfully submitted that the Claimant's right to registration in the instant case being unduly fettered.
22. The only relevant considerations that bear on the issue of if the Claimant is entitled to registration as a citizen are:
  1. Is the Claimant married to a Citizen of Antigua and Barbuda?
  2. Is this marriage subsisting for the least three years?
23. The Citizen Division rather than strictly limiting its attention to those issues is considering irrelevant matters such as:
  1. The Claimant's status with respect payment of Medical Benefits, Social Security, and Board of Education Levies.

2. The employment status of the Claimant and whether or not taxes from employment have been paid.
  3. Whether or not the Claimant has a Police Record.
  4. The ability of the Claimant's wife to produce a passport.
  5. Information regarding his immigration status (including evidence of the Claimant's temporary residence status and whether or not Claimant is in arrears with the immigration Department).
24. A decision-making process that is based on erroneous or irrelevant considerations is flawed and to the extent that these considerations have a material impact on the decision makes the decision unlawful and liable to be quashed (*Waikato Regional Airport Ltd. V Attorney-General* [2003] UKPC 50,[2004] 1 LRC66.
25. The Investigation and interview the Defendant proposes to conduct is directed at irrelevant matters and inevitably brings with it delay. This attention to irrelevant matters and the attendant delay is a fetter to the Claimant's right of registration upon application. So argues the defendant.
26. Counsel for the Claimant continues; in the discharge of its duty to register the Claimant upon application, the Citizenship Division must have regard to the policy and objects of s114 (1) (b) (i) of the Constitution and must not act in a manner to frustrate it. It is respectfully submitted that the policy and object of s114(1)(b)(i) the Constitution is to grant the right of Citizenship to spouses of citizens of Antigua and Barbuda, provided that the marriage is of at least three years duration. The policy and object of for example, seeing that persons pay taxes as and when due is covered by other statutes.
27. Ms. Simon on behalf of the Defendant acknowledged that at least 15 items listed to be reviewed and investigated have no bearing on informing the State on the pertinent issue of the Claimant's marriage status or the length of his marriage.
28. Ms. Simons, notes counsel for the defendant, is mistaken in her view that Citizenship is a privilege and not a right, but she was candid nonetheless.

29. When pressed as to the operations at the Citizenship Division, Ms. Simon revealed that there are two (2) persons in the Citizenship Division who are responsible for Citizenship interviews and that they conduct about three (3) interviews per day, three (3) days per week. At this rate the Citizenship Division would conduct about 40 "tedious" interviews in the space of a month, there being more than four (4) weeks in a Month. At an average rate of 40 interviews per month the Division would conduct about 200 interviews in five (5) months. Ms. Simmons in her characteristic candor revealed that the backlog is about 200 applicants.
30. The Candor of Ms. Simons, it is respectfully submitted by the Claimant, established that a delay of 20 months for the Claimant to obtain an interview is inordinate and cannot be attributed to any backlog in the Citizenship Division.
31. The failure to register the Claimant upon application means that his Constitutional right to Citizenship has been breached. The Violation of a right entitles the one violated to remains in Law.
32. The Words of Laws LJ in *R (Khatun) v London Borough of Newham* [2004] EWCA Civ 55, [2005] QB 37 at [41] are on point:

Clearly a public body may choose to deploy powers it enjoys under statute in so draconian a fashion that the hardship suffers by affected individuals in consequence will justify the Court in condemning the exercise as irrational or perverse ..... It may well be that the Court's decision in such case they would more aptly be articulated in terms of the proportionality principle.....At all events it is plain that oppressive decisions may be held repugnant to compulsory public law standards.
33. It is submitted by the Claimant that a mere declaration of the rights of Claimant will not be adequate. There must be more than words. There must be an award for the vindicatory damages for the grave breach of the Claimant's right to citizenship.
34. As a result of this violation the Claimant has suffered the indignity for not being able to provide for his wife and family. He has approached the Immigration Department to regularize his status so that he may apply for a week permit. Notwithstanding his repeated requests, his status has not been regularized. The condemnation of the Defendant's behavior by an award of vindicatory damages is proper and deserved in the instant case.

35. The words of Lord Hope Craighead in *Chester v Asher* [2004] UKHL 41, [2004] 1 AC 134 at [87] in the context of an injured patient are apropos:

The function of the Law is to enable rights to be vindicated and to provide remedies when duties have been breached. Unless this is done the duty is a hallow one, striped of all practical force and devoid of all content. It will have lost its ability to protect the patient and thus to fulfill the only purpose which brought it into existence.

36. The award of vindicatory damages for violation of constitutional rights as granted in *Ramanoop* has been applied in the reported cases of *Merson v Cartright* [2005] UKPC 38, (2005) 67 WIR 17, *Fraser v judicial and Legal Services Commission* [2008] UKPC 25, (2008) 73 WIR 175, and *Inniss*.

37. It is submitted by the Claimant that given the serious violation of the Claimant's rights that the instant case is an appropriate case for an award for damages for distress and inconvenience as in *Fraser*. Damages for distress and inconvenience are warranted particularly in light of the Claimant's being unable to work.

38. The Claimant was entitled to work since the time of his application in April, 2009. He would have earned \$1,200.00/week. From April, 2009 to mid-June 2010 he has lost 58 weeks of wages totaling \$69,600.00. It was submitted that the award of damages must reflect the gravity of the wrong visited upon the Claimant. There has been no challenge to the evidence on his lost earnings.

### DEFENDANT'S CASE<sup>3</sup>

39. The Claimant has applied to be registered as a citizen of Antigua and Barbuda pursuant to section 114 (1) (b) of the Antigua and Barbuda Constitution.

40. Citizenship has a process and a particular procedure to be followed. That as is customary for all applicants who apply for Antigua and Barbuda Citizenship the Claimant was asked to report to the

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<sup>3</sup> This is a substantial reproduction of the Defendant's statement of case and written submissions filed in this matter.

Immigration Department to be given a date when the required Citizenship interview may be conducted.

41. The Claimant was given an earliest available date to return of November 11, 2010 for the interview to be conducted.
42. That due to the long waiting list of applications for Citizenship interviews and other Immigration appointments, no earlier time could have been given to the Claimant as the Immigration Department.
43. The processing of the Claimant's application for Citizenship is currently incomplete.
44. There has been no refusal to grant the Claimant Citizenship status.
45. The only information communicated to the Claimant is the date for his interview by the immigration Department.
46. It is the normal procedure for the Immigration Department to conduct the interviews and compile reports on the applicants for Citizenship and forward those reports to the Passport Office after Citizenship Interviews are conducted.
47. That until such time that the Immigration Department conducts the interview with the Applicant and carries out the necessary investigations and a report is compiled and sent to the Passport Office no further action can be taken by the Passport Office to further process any applications. This is the established process followed for all applicants whose applications for Citizenship are based on Naturalization and Marriage to an Antiguan Citizen.
48. That the interview and investigation process is absolutely vital to the processing of a Citizenship application as these two processes allow the relevant authorities at the Passport Office to verify if an application for citizenship has been properly and legitimately made and is not the subject of fraud or forgery.

49. That the interview process when conducted helps to confirm the Applicant's personal details and also assist in determining whether or not an applicant has met the qualifications and or requirements to be registered as a Citizen of Antigua and Barbuda.
50. There is no specified or guaranteed time in which an application for citizenship must be processed. The overall approval process can last several Months. It is quite common for many applicants to be interviewed and approved for Citizenship within an average period 12-18 months from their original application date and this is due to the large number of new applicants seeking Antigua and Barbuda Citizenship.
51. The Defendant asserts that the processing of an application for Citizenship is never an instantaneous or overnight process it involves various paperwork, long wait times and an interview process and the process should never be rushed but should be allowed to follow its due course.
52. In the case of **Dapper v. British optical Association (1938) ALL ER 115-** A CASE WHEREBY THE Applicant/Plaintiff sought an injunction and various declarations against the Defendant. **Farewell, J** in that case stated.
- "In order to entitle himself (the plaintiff) to any such declaration or injunction as he seeks with regards to that matter, he has got to satisfy the Court that the Defendant association has done, or is threatening to do that which he says is ultra vires.....in my judgment, the Plaintiff has wholly failed in this case to show that, that is the position.....*
- I am being asked to decide between the Plaintiff and the association, and, until I am satisfied that the Defendant association are threatening to enforce this code, or that they have actually done so, I am not going to determine whether or not such action is legal.....What the result of the consideration may be I have not the least idea, nor has anyone else, so far as I know and again, it seems to me that to attempt now, before it is known what the Council elect to do, to seek to restrain the Council from holding this meeting is entirely premature, and a misconception of the position".*
53. More recently in the case of **Lester Bryant Bird v Honourable Attorney General, The Honorable James Jacob Spegilman ANUHCv No. 044 of 2009.HC Antigua and Barbuda** and

**Asot Michael v. Honourable Attorney General, The Honourable James Jacobs Spegilman ANUHCV No. 045 of 2009.HC Antigua and Barbuda** Thomas J 9ag) had this to say at para [79]:

*"In De Smith's Judicial Review the following propositions are stated in the connection:*

*'Judicial review may be premature for several reasons: the decision maker may not yet have determined the facts; or completed assessment for the relevant factors (through in case involving deprivation of Liberty the Court will be cautious in rejecting a claim as precipitate; or the impugned decision is merely preliminary to a final decision. The Court's general approach is to reject challenges made before the conclusion of a hearing in formal proceedings. Importance must be attached to the fact that judicial review is intended to be an expeditious process and that some decisions taken by public authorities need not be taken quickly'.*

54. It is noteworthy to state the words of Madam Justice Pemberton in the Lynton case. The learned Madam Justice Pemberton expressly stated:

*"It may be trite law but I must reiterate that Judicial Review proceedings speak to the Court's power to pronounce upon the methodology utilized by a decision maker arriving at this decision.....Essential therefore is that there must be a **decision** to be reviewed or to do nothing. Further that decision must be communicated to that person seeking to question it. Of much importance is whilst the decision making process may impugn the decision made by the maker, the Court cannot strike down that decision and substitute its own if the method of arriving at a decision was flawless".*

55. In the present case before the Court, no decision has been made in relation to the Claimant and his application for citizenship. This was the case even at the stage of leave being granted. Further there is no evidence put forward by the Claimant to the Contrary. However, it is conceded by the Defendant that the Claimant's application for citizenship is pending at present and the process incomplete. This is evidenced upon reading the affidavits and witness statements of both the Parliament Secretary of Passport Office of Antigua and Barbuda and the Supervisor of Temporary Residency with responsibility for citizenship interviews, filed in support of the Defendant in this matter. In the circumstances it is therefore respectfully submitted that there is no sufficient evidence before the Court from which the Court can rely on and reasonably infer that there has been a decision taken to deny the Claimant's citizenship and as such there is nothing to invoke the

Court's judicial review jurisdiction. The correct procedure to have been adopted by the Claimant was to await the outcome of the process before seeking redress to the Court.

### CONCLUSION

56. The parties have submitted various authorities in support of their respective cases. It does not appear to the Court that there is any dispute over the Law. The simple issue remaining to be determined in this matter is whether the right of the Claimant to be registered as a Citizen has been abrogated by virtue of the long time period between application, appointment and registration.
  
57. It is not sufficient to say that no decision has been taken on which the Court can review. It is the contention of the Claimant that not only can the Court review a decision taken, but a failure to take a decision is reviewable and in this case the failure having resulted in a delay of over a year is a fetter on the Claimant's constitutional right to be registered as a Citizen.
  
58. The Claimant has argued that the delay is unreasonable and is tantamount to a refusal to grant him his Citizenship. The Court cannot require the state to grant the Claimant his Citizenship but at the most, it can cause the state to consider the application for Citizenship in a more timely manner. Again, at its highest, the Court may set the parameters of the considerations required to be entered into by the State. The evidence in this matter is that there are numerous applications before the state for their consideration and that the Claimant has merely joined the line. It is difficult for the Court to see on what grounds the Claimant should be allowed to jump the queue. The Claimant's right to be registered as a Citizen cannot in my view be supreme to the right of the other citizenship applicants.

59. I accept on the evidence and the submissions by counsel of the Claimant that several of the issues that the Immigration Department required to be resolved as part of the application and registration process appeared on the face of it to be irrelevant. It was open for the Defendant to show the Court the relevance of those considerations that it has imposed upon its self. It has in my view failed to do so. Accepting that several considerations entertained by the Immigration department referred to are irrelevant, the Court still cannot understand the basis upon which the Claimant would seek to gain priority over the applicants listed for an interview before him.
60. I do not accept the implication that the Immigration Department is not required to have a formal interview process as part of the application and grant of Citizenship. It is also not clear to me and there is no sufficient evidence to the contrary, that were Immigration Department to restrict themselves to relevant considerations as submitted by the Claimant, that the Claimant would obtain a higher priority interview appointment, or that the overall time will necessarily be reduced. Whatever the complaint of the Claimant the Court cannot be used to shunt the Claimant to the front of the line.
61. I accept that there are circumstances in which the delay to take a decision or, as in this case, the delay in conducting the interview and determining whether or not the applicant is entitled to Citizenship can amount to a fetter or a breach on one's constitutional rights. The circumstances of this case come perilously close to being a fetter on the Claimant's rights.
62. The authorities cited by the Counsel for the Claimant, that the state is to apply whatever resources are required to give effect to constitutional provisions are accepted by the Court as establishing fundamental propositions for the protection of Citizens. However, the distribution and application of States resources whether for eradication of poverty and hunger or to give timely effect to the constitutional rights of Citizens is not and cannot be absolute. In an economy of surplus one can legitimately expect the allocation of the fullest resources necessary to satisfy all legitimate constitutional demands. In the instant case no evidence has been led to support the suggestion that the Immigration is underfunded in relation to the other departments of Government in circumstances of surplus. On a scale of general human experience, the well over one year period from application to interview is not out of the realm of international experience. The length of time

the process takes, surely, is in part related to the volume of applications. There is evidence of many Citizenship applications before the department. The witness for the Defendant attempted to estimate as best she could the amount of applications.

63. In the circumstances, even though instinctively the subject period seems long, I cannot hold that the length of time of the process is unreasonable and amounts to breach of the constitutional right to Citizenship of the Claimant.
64. Whereas common experience and common sense informs the Court that the Defendant may require time to establish the identity of the Defendant and other relevant particulars that relate to his identity and his marriage and whereas this process may well depend in part, on functionaries of another state, it appears to the Court that the Claimants interim application for a work permit ought to have been given priority consideration on the basis of his prima facie satisfaction of the requirements for Citizenship. This aspect of the case remains a sore point with the court. However, in the absence of holding the 'delay' in the consideration of the Claimant's Citizenship application as unlawful, the court is not aware of any right to impose a sanction in relation that unreasonable conduct on the part of the state with respect to the Work Permit- a Claim not pleaded. The Claimant's contention that the state has not challenged the identity of the Claimant, the identity of his wife, her Citizenship status and length of her Marriage is not entirely accurate. The evidence speaks to the Claimant's application not having been considered yet. I would be surprised if in these circumstance that the state would have a definitive view on those essential questions prior to considering the application for registration.
65. This case as in most cases comes down to an act of balancing competing interests which include; interest of the state in processing Citizenship and Immigration application in an orderly, transparent and fair manner, against the interests protected by the constitution and the right of an applicant to have his application for Citizenship, (and if successful, his registration) to participate in timely, orderly transparent and fair process.

66. The immigration department has not taken a reviewable decision. Further, there is insufficient evidence to support the claimant's contention that the period between the application for registration and the interview is unnecessarily long and unreasonable in the circumstances or that the extent of the period was called by the department's consideration of irrelevant matters.

**ORDER**

67. For the reasons provided above, **IT IS HERE BY ORDERED AS FOLLOWS:**

- i. The Claimant's Claim is hereby dismissed;
- ii. Each party to bear its own costs<sup>4</sup>.



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DAVID C. HARRIS  
HIGH COURT JUDGE  
ANTIGUA and BARBUDA

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<sup>4</sup> The matters of great Public importance. Issues such as this one the willingness of persons to resolve issues such as ones raised in this matter ought not to be suppressed.