



Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

Ref: HRC-COMP-RES-MIGRANTS

Mr. Bruce Smith
Acting Chief Immigration Officer
PO Box 1098
George Town KY1-1102
CAYMAN ISLANDS

VIA EMAIL: bruce.smith@gov.ky

19 May 2016

Dear Mr. Smith,

As you are aware, the influx of Cuban migrants to the Cayman Islands over the last year has tested policies and procedures for a range of our statutory entities. The Department of Immigration (“the Department”) and its affiliated bodies have obviously been at the forefront of the challenges raised by this situation. During this period the Commission has also noticed a spike in complaints filed against the Department, together with several against the Immigration Appeals Tribunal (“the Tribunal”). These complaints have generally cited similar or repeated complaints about the way in which migrants are being processed.

The complaints frequently allege a failure to provide appropriate legal counsel, including representation at hearings and translation services provided by an Immigration Officer. They also claim that decisions are being written and delivered in poor Spanish (from the Department), and only in English (from the Tribunal). These allegations engage a number of human rights concerns under the Cayman Islands’ Constitution including, but not limited to, the prevention of torture and inhuman treatment and the rights to personal liberty, fair trial, non-discrimination, and lawful administrative action.

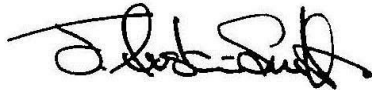
Given the gravity of the constitutional breaches alleged, the potential impact on the lives of the migrants affected and to ensure compliance with the Constitution, the Commission recommends that the Department (and its affiliated bodies, including the Tribunal) institute and implement written policy and procedure documents governing the way in which Cuban migrants are processed as a matter of urgency. The guidelines should cover the entire process, from the first encounter with enforcement agencies to the final outcome, whether that is the grant of asylum or repatriation. At the very least policies should include provisions for advising migrants of their rights, facilitating access to pro bono

legal advice upon request and provide timetables for the asylum application procedure, appealing asylum decisions, seeking judicial review of Tribunal decisions and repatriation procedures.

Given the importance of the issues raised the Commission recommends that the Legal Department is engaged to review the written policies to ensure compliance with the law. Equally, if it would assist, the Commission is willing to review and comment on these policies once in a final draft form.

As indicated, this is an ongoing and serious situation; the longer that there is a lack of certainty and proper procedures in place, the greater the scope for serious infringements of individuals' rights to occur. As such the Commission recommends that these issues be addressed and documents drafted as a matter of absolute priority.

Yours sincerely,



James Austin-Smith
Chairman, Human Rights Commission

Cc: Chief Officer, Ministry of Home Affairs
Chairman, Immigration Appeals Tribunal