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Mr. Michael Ebanks
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CAYMAN ISLANDS

Via email: michael.ebanks@gov.ky

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Dear Mr. Ebanks,

As you will be aware the Commission has been corresponding with the Ministry of Employment and Border Control (the “Ministry”) since May 2019 regarding complaints from a number of asylum grantees alleging breaches of their human rights given the inability of the Customs and Border Control (CBC) to regularise their spouses.

Following the revelations that the inability to add spouses to asylum approvals is in accordance with s. 111(3) of the Customs and Border Control Act (2018) (the “Act”) the Commission expressed to the Ministry that:

1. in these circumstances the Commission considers there to be a prima facie conflict between the Act and s.9 of the Constitution – Right to Private and Family Life, as well as the United Nations Convention relating to the Status of Refugees, to which Cayman is a signatory.
2. Asylum grantees are required to be treated equally to nationals, and therefore spouses should be able to apply for a Residency and Employment Rights Certificate.
3. As it stands, the Commission considers that should the Act be challenged in court on the basis that it is unconstitutional, such a challenge would likely be successful.

For almost two years now the Ministry has been indicating that a request was being made for the Act to go before Parliament in order to amend the current provisions creating this prima facie conflict. In December 2020 the Ministry informed the Commission that Cabinet had authorised the Ministry to issue drafting instructions, and the goal was to submit a Bill to Parliament in Quarter 1 of 2021.

The Commission notes a number of individuals continue to protest outside on the steps of the Government Administration Building at present and that the Commission itself still has three open complaints on the subject matter. Given that Parliament was dissolved on Sunday, 14 February 2021, it is presumed the matter will not be addressed in the near future as hoped by all concerned.

This subject matter remains a concern for the Commission and as such the Commission recommends the remedying of this matter remain a top priority and that the Ministry should ensure this matter is raised with the incoming Government as a matter of urgency following the general elections.

In accordance with s.116 (7) of the Constitution the Commission will publish this correspondence to our website in 7 calendar days. The Commission would be happy to also publish any responses on our website.

Yours sincerely,

Dale Crowley
Chairman