[2016] UKPC 24

Privy Council Appeal No 0022 of 2015

JUDGMENT

Oliveira (Appellant) v The Attorney General (Respondent) (Antigua and Barbuda)

From the Court of Appeal of the Eastern Caribbean Supreme Court (Antigua and Barbuda)

before

Lady Hale

Lord Kerr

Lord Wilson

Lord Hughes

Sir Bernard Rix

JUDGMENT GIVEN ON

2 August 2016

Heard on 9 February 2016

Appellant	Respondent
David Dorsett PhD	Carla Brookes-Harris
Owen Roach	Rose-Anne Kim
(Instructed by M A Law (Solicitors) LLP)	(Instructed by Charles Russell Speechlys LLP)

SIR BERNARD RIX:

1.
In April 2009 the appellant, Clive Oliveira, a native of Guyana, filed his application to be registered as a citizen of Antigua and Barbuda, on the basis of his wife's citizenship of Antigua and Barbuda and his subsisting marriage to her for more than three years, as he was entitled pursuant to section 114(1)(b) of the Antigua and Barbuda Constitution Order 1981 to do.

2.
On 18 July 2011, nearly 27 months after his application for registration, Mr Oliveira was so registered.

3.
Section 114(1)(b) provides as follows:

“(1) Subject to the provisions of paragraph (e) of section 112 and section 117 of this Constitution, the following persons shall be entitled, upon making application, to be registered on or after 1 November 1981 -

(a) ...

(b) any person who -

(i) was married to a person who is or becomes a citizen ...

Provided that no application shall be allowed from such person before the marriage has subsisted for upwards of three years and that such person is not, or was not at the time of the death of the spouse, living apart from the spouse under a decree of a competent court or a deed of separation ...”

4.
Mr Oliveira’s wife had also been a Guyanese citizen when, on 30 September 2002, she had been registered as a citizen of Antigua and Barbuda on the basis that she had been domiciled there and for a period of not less than seven years preceding her application for registration had been lawfully ordinarily resident there, pursuant to article 114(1)(c)(ii) of the Constitution Order.

5.
In this appeal, Mr Oliveira complains that the time taken to register him as a citizen of Antigua and Barbuda was unnecessarily and unreasonably long. He claims that this was a breach of his constitutional rights pursuant to the Constitution Order, as well as being a matter for judicial review, and that he is entitled to damages as a consequence. He submits that his damages should include damages for his inability to work in the interim between application and registration.

6.
The respondent, the Attorney General for Antigua and Barbuda, resists this appeal, on the ground that there is no basis for departing from the findings in the courts below that Mr Oliveira’s application was handled rationally and within a reasonable time and thus lawfully. The essential issue is whether Mr Oliveira’s complaint or the Attorney General’s response is correct.

7.
At first instance, by his judgment dated 12 October 2010 Justice David Harris rejected Mr Oliveira’s claim. He held that although the circumstances of the case “come perilously close to being a fetter on the claimant’s rights” (at para 61), ultimately there was “insufficient evidence to support the claimant’s contention that the period between the application for registration and the interview is unnecessarily long and unreasonable ...” (para 66). On appeal, the Court of Appeal by their judgment dated 10 March 2014 upheld that judgment. They said that a “delay of nineteen months between application and possible registration ... may not, in the circumstances, be inordinate, even if it came - in the language of the trial judge - ‘perilously close to being a fetter on the [appellant’s] rights’” (at para 27).

The facts

8.
Mr Oliveira’s attempts to be registered as a citizen of Antigua and Barbuda has had a rich history.

9.
Mr Oliveira and his wife were married in Guyana on 21 October 1991 in the Hindu East Indian tradition. First he, and later she, migrated from Guyana to Antigua in 1993: he in May and she in

December of that year. Except for brief absences he has resided in Antigua from that time. Whilst residing in Antigua, Mr Oliveira had been self-employed and had in the past obtained a work permit to work as a self-employed person. On 23 October 1997 Mr Oliveira and his wife were married in Antigua in accordance with the laws of Antigua and Barbuda.

10.
On 30 September 2002 Mr Oliveira's wife was registered as a citizen of Antigua and Barbuda, on the basis that she was a Commonwealth citizen domiciled in Antigua and Barbuda and lawfully and ordinarily resident there for no less than seven years immediately preceding her application for registration as a citizen.

11.
In the same year Mr Oliveira was convicted of the rape of a 14-year old girl, but his conviction was quashed on appeal. He was retried and convicted again, and his conviction was again quashed on appeal. In February 2007 the Director of Public Prosecutions entered a nolle prosequi. Mr Oliveira was then released from prison and deported in March 2007, but returned to Antigua in August 2007 and was given leave to remain for one month. He sought an extension of that leave, which was denied. The police retained his Guyanese passport. On 4 September 2007, Cabinet declared him a prohibited immigrant and issued instructions for his deportation, but he continued to live in Antigua.

12.
It was at that point that he first filed a claim, on 23 July 2008, inter alia for a declaration that he was entitled to be registered as a citizen of Antigua and Barbuda by virtue of his marriage to his wife. He also disputed the deportation order and the impounding of his passport.

13.
Judgment in that claim was given in the High Court by Blenman J on 26 May 2009. On the matter of deportation, the judge found that she could "place very little weight, if any, on the statement of the Immigration Officer in relation to the issue of national security" and found that the Cabinet decision to deport him was irrational (para 75). She also found that the passport had been unlawfully impounded. On the question of his entitlement to be registered as a citizen on the ground of his marriage, the court declared that he was entitled to apply for registration, although at that time he had not done so, since in fear of deportation and later in the absence of his passport he had not been able to do so. The judge said (at para 83 of that judgment):

"Accordingly, I do not share the view that the court is barred from making any declaration in relation to his entitlement in so far as he has not applied to be registered as a citizen of Antigua and Barbuda. There is no doubt in my mind that on the facts presented, read together with the law, there is nothing to prevent the court from declaring that he is entitled to apply to be registered as a citizen of Antigua and Barbuda. I so hold."

14.
The judge had previously recorded the submission on Mr Oliveira's behalf that the facts of his subsisting marriage "which are not subject to argument" entitled Mr Oliveira upon application to registration as a citizen (at para 31). It appears that the judge acknowledged those facts, which are not in dispute in the current litigation either.

15.
On 2 April 2009, even before that judgment was handed down, Mr Oliveira's passport was returned to him, and, as the agreed statement of facts on this appeal narrates, he "immediately" made use of its

recovery to make his application for registration as a citizen pursuant to section 114(1)(b). That application was made in due form at the Passport Office. He received a receipt, dated simply “2009”, for his completed application and for the papers which that application called for such as his passport, birth certificate and marriage certificate, and was directed to call on the Immigration Department on 1 May 2009. That date was written on the receipt: “Please … go to Immigration Dept 1-5-09”. The witness statement of Ms Brenda Cornelius, Permanent Secretary of the Passport Office, confirms that Mr Oliveira’s application was made “in or around April 2009”.

16.
It is to be assumed that on 1 May 2009 Mr Oliveira presented himself at the Immigration Department, which directed him to return to its Citizenship Division for an appointment on 11 November 2010, namely some 18 and half months later. He was also handed a form which instructed him to bring with him to that appointment 13 different types of documents, and, if his application for citizenship was by reason of marriage, as it was, in addition another four types of documents, namely his wife’s passport, her birth certificate, her citizenship certificate, and their marriage certificate. Many, and perhaps all, of the first 13 categories of documents were of dubious relevance to a section 114(1)(b) application. As the judge at first instance stated (at para 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.”

17.
The judge went on to find (at para 59):

“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 to the defendant to show the court the relevance of those considerations that it has imposed upon itself. It has in my view failed to do so.”

18.
There is some dispute as to whether Mr Oliveira called at the Immigration Department, as he had been directed, on 1 May 2009 or, as subsequently the witness statement dated 12 February 2010 of Ms Juliet Simon, the Supervisor of Temporary Residence at the Immigration Department, was to say: “In or around late of May or early June of 2009”. There is no support for that timing, however. When cross-examined in these proceedings, Mr Oliveira was not challenged on the basis that he had failed to keep his appointment of 1 May 2009. In the cross-examination of Ms Simon, she agreed that Mr Oliveira had come into her department in May 2009. The judge made no specific finding. The Court of Appeal seems to have assumed that the appointment of 1 May 2009 was kept (at para 1). The agreed Statement of Facts does likewise (“The appellant … was directed to ‘go to’ the Immigration Department on 1 May 2009 which then directed him to return to the Citizenship Division on 11 November 2010 …”. There seems to be no reason not to accept that Mr Oliveira did what he had been asked to do.

19.
The lengthy delay between 1 May 2009 and the interview appointment of 11 November 2010 is the most critical factor in the history of events. Naturally enough, the interview was not the end of the process, and ultimately Mr Oliveira’s registration as a citizen was not accomplished until 18 July 2011, a further eight months, making a total of some 27 months (April 2009 to July 2011) for the process as a whole. On behalf of Mr Oliveira, it is submitted that from start to finish the process

should not have taken more than one month. On behalf of the Attorney General, it is submitted that these historic time scales were reasonable and rational.

20.
Mr Oliveira did not, however, wait out the 19-month period for his appointment, but on 17 November 2009 filed the present litigation, seeking relief under the Constitution Order and/or by way of judicial review in respect of the on-going failure to register him as a citizen.

21.
In the meantime he had applied for temporary residence, with the aim of obtaining work. In early July 2009 he attended at the Immigration Department with a letter dated 1 July 2009 which his solicitors addressed to the Chief Immigration Officer at the Immigration Department. The letter referred to his application for citizenship and applied for temporary residence "whilst he awaits the completion of his citizenship application. The granting of temporary residence will regularise his continued stay in the country." The letter was signed by Dr Dorsett, his counsel. On 16 July 2009 a further letter from Dr Dorsett to the Chief Immigration Officer referred to Mr Oliveira's visit and enclosed the letter of 1 July 2009. On 31 August 2009 a third letter from Dr Dorsett was addressed to the Chief Immigration Officer, referring to the two previous letters and stating that they had received no reply. By letter dated 10 November 2009, however, from solicitors acting for the Immigration Department and the Chief Immigration Officer, and headed "Temporary Residence Application for Clyde Olivera [sic]", it was stated that the "above referenced matter has been referred to us for response". The letter went on to state that the Cabinet of Antigua and Barbuda ordered an investigation into the Temporary Residence Unit of the Department in April 2008 and that the Cabinet had "temporarily postponed the issuance of Temporary Residence Certificates pending a report from The Investigation Committee".

22.
Ms Simon, however, in her witness statement said that there were no records at the Immigration Department relating to an application from Clive Oliveira for temporary residency. Given the response from the Department's own solicitors, that cannot be correct. Ms Simon, the Supervisor of Temporary Residency at the Immigration Department, gave no evidence about the suspension of the issue of Temporary Residence Certificates, in effect the suspension of the work of the Temporary Residence Unit, even though she said in her affidavit dated 29 October 2009 and her witness statement dated 12 February 2010 that she had been appointed to that position in May 2008, ie a month after the letter cited above had said in effect that the work of the temporary residence unit had been suspended.

23.
The judge accepted the letters from Mr Oliveira's counsel and Mr Oliveira's own evidence about them in preference to the suggestion in Ms Simon's evidence that Mr Oliveira's application for a temporary residence permit was unknown to the Immigration Department. He said (at para 64):

"it appears … that the claimant's 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."

24.
The Court of Appeal, however, was dismissive of this concern, saying in a postscript (at para 31):

"but there was no evidence, however, of the appellant ever having applied for and been refused a work permit - interim or otherwise."

In that, however, the Court of Appeal appears unfortunately to have been mistaken. The point about the application for temporary residence is that it would have permitted Mr Oliveira to work.

25.
There was evidence at trial as to the circumstances in which Mr Oliveira had been delayed in his application until his appointment at the Immigration Department on 11 November 2010. Ms Simon, who, apart from being Supervisor of the Temporary Residency Unit at the Immigration Department was one of the immigration officers responsible for citizenship interviews, and Ms Cornelius, the Permanent Secretary of the Passport Office, gave evidence as to how those two departments processed citizenship applications.

26.
Ms Cornelius explained that it was customary for all male applicants for citizenship to be asked by the Passport Office (where the application is made) to attend for interview at the Immigration Department. The purpose of the interview is not only to verify that the application for citizenship is legitimately made and is not the subject of fraud or forgery, but also, as the documents which Mr Oliveira was asked to bring to his interview demonstrated, to enable the Immigration Department to check on the applicant's criminal record and his immigration, work and tax status. Women apparently do not have to be interviewed. However, the applicant's marriage status is determined at the Passport Office, where no interview is conducted, but where the relevant documents are checked. Ms Cornelius said the following in her witness statement about the length of the process (at paras 10-11):

"There is no specified or guaranteed time limit in which an application 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 of 12 to 18 months from their original application date and this is due to the large number of new applicants seeking Antigua and Barbuda citizenship. There have been numerous applicants for citizenship who have waited several months for their citizenship interviews."

27.
Ms Cornelius illustrated that evidence by attaching to her witness statement the "Citizenship Check Sheet" from the Immigration Department of two other applicants: one of them received a receipt from the Passport Office of his application dated 15 May 2008 and was interviewed at the Immigration Department on 15 April 2009 (a period of 11 months); the other's Passport Office receipt was dated 18 June 2008 and his interview took place on 3 June 2009 (a period of between 11 and 12 months). There was no similar evidence of longer delays.

28.
Ms Simon, who had hands-on experience of Immigration Department interviews, simply said that Mr Oliveira had been given the earliest possible date for his interview: no earlier date could have been given to him. She was cross-examined about that at trial. She said that she did not have "the book" in front of her, but it was "quite a lot of persons", giving a ballpark figure of "about 200". She then clarified that interviews took place three days a week, at the rate of three per day. She agreed that that would amount to some 40 interviews per month, and that the 200 persons she had spoken of would be interviewed within about five months. The backlog was made up of both citizenship applications and other immigration related applications, a matter remarked on by the Court of Appeal (at para 21).

29.

Ultimately, Mr Oliveira attended for interview at the Immigration Department, presumably on the appointed date of 11 November 2010, and after a further period of another eight months, about which the Board knows nothing, he was registered as a citizen on 18 July 2011.

30.
Mention should also be made of a somewhat different process for the handling of citizenship applications under the comparatively recent Antigua and Barbuda Citizenship by Investment Act 2013. This provided a procedure for the obtaining of citizenship by investors in Antigua and Barbuda. That procedure was handled by a special unit (the Citizenship by Investment Unit) (Schedule, regulation 3(1)). The process has to be concluded within three months with the applicant being notified within that period that his application had either been approved, or denied, or "delayed for cause" (regulation 5(14)).

The judgments below

31.
The hearing of Mr Oliveira's claim took place before Harris J in June 2010, and judgment was delivered on 12 October 2010, about one month before his appointment at the Immigration Department.

32.
The Board has described the facts and evidence above. In his judgment, Harris J came to the conclusion, highlighted above, that the delay of 19 months until the interview, at that time still in the future, although "perilously close" to the line of unreasonableness, was not over it. He opined that the "well over one-year period from application to interview is not out of the realm of international experience" (para 62). He accepted Ms Simon's attempt to estimate the amount of applications, but he also accepted her evidence that Mr Oliveira had simply joined the queue, and could not expect to jump it. He said (at para 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."

33.
When Mr Oliveira appealed on 24 November 2010, it was within two weeks of his interview. Eight months later, on 18 July 2011, he was registered as a citizen. The hearing in the Court of Appeal took place in November 2013, and judgment was given on 10 March 2014.

34.
Although there were originally seven grounds of appeal, of which two were abandoned on the basis that they were contained within the other five, the essential point remained, as it had been below, whether the delay of 19 months until interview, let alone registration, was unreasonably long. The Court of Appeal described this as the "central issue" (at para 7). In this respect, the court upheld the reasoning and critical finding of the trial judge. It took into account the three-month period laid down by the 2013 Act, but concluded that the delay otherwise engendered by a "significant backlog" (Ms Simon's 200 cases) which had to be processed by only two employees was not inordinate. A significant part of the court's reasoning was that the judge had been exercising a "discretion" (para 19) and that, on classical principles, there was no good basis on which to go behind that discretion, or to reject his finding that Mr Oliveira had been given the earliest possible date for interview.

Submissions

35.
On behalf of Mr Oliveira, Dr Dorsett submitted that the delay of 19 months until interview, a fortiori of 27 months until registration, was unreasonably long, a fetter on his right to be registered and a breach of his constitutional rights. The matter went beyond the rationality or otherwise of administrative action, or the exercise of a mere discretion by the court in a judicial review, and amounted to an ultra vires abuse of power. This was all the more so against the background of Mr Oliveira's success in his previous claim, where his right to apply for registration on the basis of his subsisting marriage to his wife was recognised, and in the light of the unfairness of his position where, in the absence of temporary residence giving him the right to work, he was unable to look after his family. Mr Oliveira was entitled to registration "upon making application" (section 114(1)), and that meant immediately, or at least promptly, with an outside limit of one month. He relied on Gowa v Attorney General [1985] 1 WLR 1003 (HL) with respect to "upon making application"; on R v Secretary of State for the Home Department, Ex p Phansopkar [1976] QB 606 (CA) at 622 for the proposition that if necessary a separate queue should be created for those with simple straightforward cases; and on Engineers' and Managers' Association v Advisory, Conciliation and Arbitration Service [1980] 1 WLR 302 (HL) for the submission that account should where appropriate be taken of up to date circumstances, such as the ultimate 27 months' delay.

36.
On behalf of the Attorney General, Ms Carla Brookes-Harris submitted that the judgment below should be upheld for the reasons there set out for dismissing Mr Oliveira's grounds of appeal to the Court of Appeal. In essence, the trial judge had said that it had not been proved that the delay of 19 months until interview was too long, or that delay had been caused by admittedly irrelevant matters. It had been recognised that Mr Oliveira was relying on constitutional rights as well as judicial review. As for registration "upon making application", that did not mean instantly but "within a reasonable time" and the time taken was not so irrational as to be unreasonable. On the contrary, a process had to be gone through, and Mr Oliveira was not entitled to jump the queue. As for the application for temporary residence, Mr Oliveira was an illegal entrant and was properly denied the ability to work pending his application for citizenship.

Discussion and decision

37.
The central and essential question is whether a period of 19 months until interview alone is within a reasonable time. That question has to be considered in the light of all the circumstances, making full allowance for the feel and knowledge of the local courts.

38.
It is recognised that a good argument can be made for letting the matter rest on that local knowledge, on the finding that Mr Oliveira cannot complain of merely being required to join the queue, and on the conclusion that however close these facts are to an illegitimate line, they had not crossed it.

39.
The Board is satisfied that Mr Oliveira's submission that registration should typically and as a matter of the interpretation of the Constitution Order be immediate or almost immediate, viz within one month, is not correct. The case of Gowa does not assist that submission. There the only question was whether an application for registration of a minor, made under the British Nationality Act 1948, and which had remained undetermined into the era of the British Nationality Act 1981, should be

regarded as still having to be determined under the 1948 Act. The Board notes, however, their Lordships' understanding that the declaration there given, that the proper authority should forthwith consider and determine the applications, "would be acted on swiftly" (at p 1011A).

40.
Of more relevance is a case such as R (Saadi) v Secretary of State for the Home Department [2002] UKHL 41; [2002] 1 WLR 3131, where the House of Lords held that the question of an asylum applicant's immediate detention had to be resolved within a reasonable time (there established). Although the contexts of liberty and citizenship are different, and the timescales involved are different, nevertheless in the Board's judgment the Attorney General, and the courts below, were right to acknowledge that the same test, of a determination, here of the right of citizenship, within a reasonable time is the relevant test.

41.
In this context, it is accepted that there needs to be a process for the consideration of applications under section 114 of the Constitution Order and that the granting of the application cannot simply be automatic. It is unclear to the Board, however, that the full gamut of the inquiries undertaken by the Immigration Department was necessary. The Attorney General has accepted that at least 15 items listed to be reviewed and investigated had no bearing on informing the state on the pertinent issue of Mr Oliveira's marriage status or the length of his marriage, for the purposes of section 114(1)(b). The judge himself commented that at least several of the issues which formed part of the process appeared to be irrelevant.

42.
Making every allowance, as in the Board's view it should, for the customary ways of doing things in Antigua, and for the lumping together of relatively straightforward applications such as those under section 114 with other immigration applications of a different nature, we nevertheless conclude that a period of one year, from application to registration, for the consideration of a section 114 application is in general the outside limit of a reasonable time, and that delay beyond that time, absent special considerations, is likely to be unlawful because a fetter on the legitimate applicant's right to be registered. We also conclude that there were special considerations in the case of Mr Oliveira which make the limit of one year more than generally pertinent.

43.
The Board has come to this conclusion in the light of the following factors. The only, but also regarded as the critical, evidence in support of the decisions below was the evidence of Ms Simon that Mr Oliveira had been given the earliest available appointment, albeit 19 months down the line and still longer counting from the original application. However, not only was a period of that length of time unjustifiable in itself on any reasonable basis, rendering it almost inevitable that the complete period from application down to registration would be materially longer still, but that evidence was of too general and superficial a quality to merit the weight that was placed on it. It was not supported by any documentary evidence as to the relevant appointment book. Ms Simon referred to such a "book" in her cross-examination, but she did not have it to hand. Ms Cornelius spoke of applicants for citizenship having to wait "several months" for their appointment. She put forward two examples from 2008-2009 (not from 2009-2010), as presumably the best examples she could find from the point of view of the Attorney General's case, but they showed only periods of 11 months' and between 11 and 12 months' delay between application and interview. Ms Cornelius also spoke of an "average period of 12 to 18 months" for the whole process from application to approval. In the present case all these periods were greatly exceeded. Moreover, when Ms Simon, who had the responsibility of conducting

the Immigration Department interviews herself, was cross-examined as to the detail of the backlog, she could not support a backlog of longer than five months. In the circumstances, the blithe assurance that Mr Oliveira had been given the earliest possible interview date should not have been accepted in the context of his claim to a constitutional right. Moreover, in Phansopkar at p 622E-F Lord Denning MR observed that in straightforward cases (there of certificates of patriality), a separate queue could be formed "because they are entitled as of right and not by leave". That observation appears to be appropriate here.

44.
In this context, contrast can also be made with the three months period which had to suffice, in the absence of special circumstances, for the resolution of a merely discretionary right to citizenship of a suitable investor, under the 2013 Act, albeit at the hands of a special unit formed for that purpose; and to the fact that, making all allowances for any pressure on resources which the staffing of the Immigration Department might have been suffering in 2009/2010, the Board reminds itself that absence of resources is not in general an excuse for maladministration.

45.
Apart from these considerations, moreover, there were special factors in the case of Mr Oliveira which support a reasonable time limit of 12 months. First, his case had already come before the court in 2009, and the court had then recognised his right to apply for citizenship on the ground of his marriage. Secondly, his position pending registration was not a happy one in circumstances where he could not work without temporary residence. Whatever be the facts concerning the availability of temporary residence at that time, it is clear that he had made his application for temporary residence, and had explained his difficulties in the absence of temporary residence, to the Immigration Department in July and August 2009.

46.
The Attorney General relied on the submission that Mr Oliveira's presence in Antigua as an overstayer was deleterious to his application. It did not turn out to be. Indeed, it was common ground that his section 114 application could have been made out of country.

47.
In these circumstances, the Board concludes that the delay up to November 2010, which the trial court had to consider, was itself a breach of Mr Oliveira's constitutional rights, let alone any further inevitable delay post-interview. There was some dispute before the Board as to whether the ultimate delay of 27 months could be taken into account, or had been before the Court of Appeal as in issue. In the Board's view this does not matter, but also it could properly be taken into account. At the time of the trial before Harris J, the ultimate period for registration lay in the future. At the time of the appeal, the Court of Appeal must have known of the date of registration, and the Board has been told that the Attorney General drew the court's attention to it and that Dr Dorsett had submitted that the court could take account of it. It has been relied on in the notice of appeal to the Board. The Board accepts that in such matters it can be appropriate to take account of the up to date position: see the Engineers' and Managers' Association case at pp 306G-H, 310F-G, 320F. But the Board's conclusion rests on the fact that by the time of trial the delay occurring pending the forthcoming interview was already unreasonable.

48.
For these reasons the Board will humbly advise Her Majesty that the appeal will be allowed with costs before the Board and in the courts below and that a declaration should be made declaring that Mr

Oliveira’s application for registration should have been concluded within 12 months from being made. Since the precise date of his application is unknown, the Board will name 15 April 2009 as the latest date of his application. Mr Oliveira’s claim should be remitted to the trial court in Antigua for it to assess the damages.