

IN THE CITIZENSHIP APPEALS TRIBUNAL  
AT SUVA

CITIZENSHIP APPEALS TRIBUNAL CASE NO: HIM 02  
OF 2021

IN THE MATTER of an appeal under section 21 of the Citizenship of Fiji Act 2009 from the decision of the Minister for Immigration.

BETWEEN

YAZHEN SUN

Appellant

AND

MINISTER FOR IMMIGRATION

Respondent

Coram

Senileba LTT Waqainabete-Levaci, Judge  
S. Jiuta, RM  
T. Lee, RM

Counsel

Mr. Fa. J for the Appellant  
Mr. Naidu. Y. and Ms. Harikisoon. A. for the  
Respondent

Date of Judgment

07 June, 2024

DECISION

Lee, T. RM: Member of the Tribunal

*Cause and Background*

- [1] Ms. Yazhen Sun (hereinafter referred to as Ms Sun) appeals the decision of the Minister of Immigration to refuse her application for citizenship by naturalization.
- [2] Ms. Sun was advised of the decision in a letter dated 4 February, 2021, which reads:

**"RE: APPLICATION FOR CITIZENSHIP BY NATURALIZATION.**

*I refer to your application for citizenship by naturalization dated 15.02.2018 and wish to advise that it has been declined on 01.02.2021.*

*Pursuant to Section 13 (2) of the Citizenship Act, 2009, the Department has documentary evidence that you have failed to meet the prescribed requirements towards acquiring Fiji Citizenship.*

*In accordance with Part 11, Section 21 of the Citizenship Act 2009, you are hereby advised that if you are aggrieved by this decision, you may appeal the decision above.*

*Your appeal should be made in writing to the Citizenship Appeals Tribunal within 14 days from the date of this letter."*

- [3] A brief history of Ms. Sun and her arrival into Fiji is prudent for consideration.
- [4] Ms. Sun is a citizen of the People's Republic of China. She was born in China on 22 July, 1972. She is now 52 years old.
- [5] Ms. Sun first arrived in Fiji on 27 February, 2003, on a work permit and was employed by Ghimli Fashions Fiji Limited. The work permit was valid from 29 January, 2003 for three (3) years. Ms. Sun departed Fiji on 23 April, 2005 before the expiration of the visa.
- [6] Ms. Sun had been a frequent traveler to Fiji since her first arrival on 27 February, 2003. On 6 November, 2011, the Department of Immigration granted Ms. Sun a work permit to work for Sun's Trading Company Limited. The work permit was for 3 years from 16 December, 2011 to 16 December, 2014, and was further extended from 16 December, 2014 to 6 November, 2017.
- [7] On 14 November, 2017, the Department of Immigration issued Ms. Sun a 3 year Investor Permit to work as Director/Shareholder for Sun's Trading Company Limited.
- [8] Ms. Sun's company operated business activities in Import,

wholesale & retail of clothes, shoes, handbags, curtains, umbrellas, toys and solar light.

[9] On 15 February, 2018, Ms. Sun lodged an application for citizenship by naturalization. Her application was made pursuant to section 11(2) of the Citizenship of Fiji Act 2009 on the grounds that she has been lawfully resident in Fiji for a period of 14years since 27 February, 2003.

#### **Reasons for Refusal of Citizenship**

[10] After processing and assessing Ms. Sun's application, the Immigration Department found that Ms. Sun (i) was not able to understand spoken English; (ii) needed an interpreter to answer questions that were asked in English; (iii) could not write in English; (iv) was not able to read in English; (v) was unable to answer questions related to responsibilities of a citizen of Fiji and required the questions to be translated.

[11] The Minister in exercising his discretion pursuant to section 13 (2) of the Citizenship of Fiji Act 2009, refused the Appellant's citizenship application.

#### **Notice and Grounds of Appeal**

[12] In the Notice and Grounds of Appeal dated 16 February, 2021, Ms. Sun's appeal is as follows:-

1. *I have been in clouds of doubt as the Director failed to detail in writing to me on which clause in the Citizenship Act 2009 requirements section that made my application unsuccessful.*

[13] While the Tribunal notes Ms. Sun's submission at paragraph 2 the opportunity was present for Ms. Sun and her Solicitor(s) to file an Amended Grounds of Appeal, to specifically outline her grievances. No such amendments were forthcoming.

### ***The powers and establishment of the Tribunal***

[14] Section 21(2) of the Citizenship of Fiji Act 2009 outlines the function of the Citizenship Appeals Tribunal.

[15] Any person aggrieved by the decision of the Minister can rely on section 21(1) to appeal the Minister's decision. The section reads:

'any person aggrieved by the decision of the Minister under section 8(9), (10), (13), or (17) may, within 14 days of being notified of the decision, appeal to the Citizenship Appeals Tribunal'.

[16] Section 21(5) of the Citizenship Act outlines the powers of the Tribunal. They are to-

'confirm, review or vary the decision appealed against and may order the payment of such costs as it thinks fit'.

### ***The Law and Analysis***

[17] Ms. Sun had made an application for citizenship by naturalization. The gist of Ms. Sun's application is that she has been lawfully resident in Fiji for a period of 14 years since 27 February, 2003, thus relying on section 11(2) of the Citizenship of Fiji Act 2009.

[18] Tribunal has referred to the letter dated 4 February, 2021 notifying Applicant of the decision in refusing her application.

[19] The letter is self-explanatory, however, for clarity and completeness sake, we will address the contents of the letter.

[20] Paragraph 2 of the letter clearly states that the Appellant has failed to meet the requirements under 13(2) of the Citizenship Act.

[21] It was also reflected in the letter that the Respondent had in its possession documentary evidence to establish that

Paragraph 2 of the letter reflects the broad reasons for which the application was refused. It was that the applicant did not meet the requirements of s. 13 (2) of the Citizenship of Fiji Act 2009.

[22] These documentary evidence include the Citizenship Interview Forms which was undertaken to verify whether the Appellant was knowledgeable of the English language.

[23] In the recent ruling of Taylor v Minister of Immigration<sup>1</sup>, section 13(2) of the Citizenship Act was discussed -

'There are three requirements set out in section 13(2) of the Citizenship Act that needs to be satisfied by an applicant. Which one of it was not met was not identified in the letter by the Department. It is clear from the letter that although broad reasons were provided, specific reasons were not<sup>2</sup>'.

[24] The Tribunal in Taylor vs Minister of Immigration (Supra) noted the Respondent's argument that the Citizenship Act does not impose on the Minister an obligation to give reasons for refusal of the application and so the reasons in the letter is justified and proper<sup>3</sup> and similarly in Kermode J in the case of Mary Elizabeth Schramm -v- Attorney General of Fiji and Minister of Labour and Industrial Relations and Immigration (29 October 1982).

[25] In Ms. Sun's appeal, the specific reasons for refusal of the application has been clearly provided in the Affidavit. Similarly in Taylor vs Minister of Immigration (Supra), Wati J concluded:

'I find that the letter of refusal and the subsequent information by the immigration department through its affidavit to the Tribunal constitutes sufficient reasons why the application was refused. Even if the Tribunal finds that the letter of refusal did not constitute sufficient reasons for refusal of the

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<sup>1</sup>Taylor v Minister of Immigration [2024] FJHC 230; HIM001.2021 (12 April 2024)

<sup>2</sup>Taylor v Minister of Immigration [2024] FJHC 230; HIM001.2021 (12 April 2024) at para 37 on pg 9 per Wati. J

<sup>3</sup>Ibid at para 38 on pg 9 per Wati. J

application, the appeal cannot be allowed on that basis alone<sup>4</sup>.

[26] Tribunal has noted the strenuous argument by counsel which is summed up in paragraph 18 of their submission that Appellant has spent almost half of her adult life cultivating a lifestyle in Fiji with her family through their business activities which has been in existence, and continues to exist since 2011 to date. This has seen the Appellant contribute to Fiji's society in a social and economic way, that demonstrates her ability to communicate with Fiji and her community in the English language, establishing that the appellant understands the responsibilities of Fiji citizen.

[27] Counsel for Appellant also argued that the Respondent's refusal<sup>5</sup> is false and without merits as Appellant, through her many years of living and working in Fiji, has demonstrated through her business ventures and contribution to Fiji socially and economically, that she has required knowledge of the English language and the responsibilities of a Fiji citizen.

[28] The legislative requirements in determining the application is outlined in section 13(2) of the Citizenship Act and not what is identified, perceived or believed by the Appellant.

[29] The length of stay qualifies the appellant to apply to be a citizen by naturalization. Once a person qualifies to apply, whether or not he or she will be given a citizenship is a matter that will be considered on the factors outlined in s. 13(2)<sup>6</sup> of the Citizenship Act.

[30] The same would apply to an Applicant who has contributed to Fiji's society in a social and economic way. It qualifies a person to apply to be a citizen by naturalization, but does not guarantee him or her citizenship.

[31] The reason for denying Ms. Sun's application was because of inadequacy of English language knowledge. There is no other ground of appeal challenging the correctness of the findings

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<sup>4</sup> Ibid at para 40 on pg 9 per Wati. J

<sup>5</sup> Submission filed on behalf of Applicant at para 11 on pg 3-4

<sup>6</sup> Taylor v Minister of Immigration [2024] FJHC 230; HIM001.2021 (12 April 2024) at para 50 on pg 11 per Wati. J

on good character and of the responsibilities of a citizen of Fiji.

[32] The Tribunal need not even re-visit whether the Minister could arrive at a decision that the appellant was not a person of good character and that she did not have adequate knowledge of English [and of the responsibilities of a citizen of Fiji].

### **Conclusion**

[33] I do not find that the Appellant meets the eligibility requirements for conferral of Fijian citizenship. The appeal ought to be dismissed. The decision of the Minister is affirmed.

[34] The appellant must pay to the respondent costs of the proceedings in the sum of \$3,500. This sum ought to be paid within 21 days.

### **Levaci SLTTW, J;      Chair of Tribunal**

[35] I concur with the findings of Resident Magistrate T. Lee. Learning and understanding English is an important component of languages spoken in Fiji today. Most business undertakings are conducted in English and the moderm of learning in Fiji schools and tertiary institutions is in English.

[36] As to costs, I agree that such costs should be imposed.

### **Jiuta, S, RM;      Member of Tribunal**

[37] I concur with the findings of Resident Magistrate Lee.

[38] Further to Resident Magistrate Lee's findings, I find there is a need to reiterate that the Respondent's process to assess an applicant's knowledge of the English language and responsibilities of a citizen of Fiji does not solely rely on an applicant's economic contribution to Fiji. There are basic factors that are considered and the applicant has failed to meet the requirements.

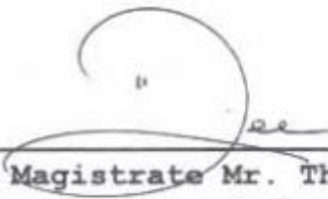
[39] In terms of costs, I agree to such costs being imposed.


**Orders**


[40] The orders of the Tribunal are that -

- (i) The Decision of the Minister is upheld;*
- (ii) The Appeal is hereby dismissed;*
- (iii) Costs against the Appellant for \$3500 payable in 21 days.*



  
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Resident Magistrate Mr. Thompson Lee  
Tribunal Member

  
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Resident Magistrate Ms. Senikavika Jiuta  
Tribunal Member.

  
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Hon. Justice Senileba L.T.T Waqainabete-  
Levaci, Chair of the Tribunal.

**Solicitors:**

FA & Associates for the Appellant.  
Office of the Attorney General for the Respondent.