

IN THE CITIZENSHIP APPEALS TRIBUNAL  
AT SUVA

CITIZENSHIP APPEALS TRIBUNAL CASE NO: HIM 05  
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

SHIJING CHEN

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] Being aggrieved by the decision of the Minister for Immigration, Ms. Shijing Chen appealed the decision to refuse her application for citizenship by naturalization.
- [2] Ms. Chen was advised of the decision in a letter dated 23 February, 2021, which reads:

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

*I refer to your application for citizenship by naturalization dated 18.03.2019 and wish to advise that it has been declined on 17.02.2021.*

*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. Chen and her arrival into Fiji is prudent for consideration.
- [4] Ms. Chen is a citizen of the People's Republic of China. She was born in Liaoning, China on 20 January, 1970. She is now 54 years old.
- [5] Ms. Chen first arrived in Fiji on 23 August, 2013 on a visitors permit. While she was on a visitors permit, she applied for an investor permit.
- [6] The Department of Immigration granted Ms. Chen an investor permit for a duration of 3 years from 3 September, 2013 to 3 September, 2016. During this period, Ms. Chen established a company called Feng Yuan Company PTE Limited.
- [7] Ms. Chen's company operated in business activities limited only to Import, wholesale & retail of textiles, hardware & building materials, articles of daily use, hygiene & cleaning agents, furniture including kitchen equipment, lightening & domestic electric appliances, machinery and electrical equipment, ICT products such as mobile phones and computer and network telecommunication products.

[8] The Department of Immigration would grant Ms. Chen two further extensions of the investment permit, the next one from 11 August 2016 to 11 August 2019 and the last being from 15 October 2020 to 19 October, 2022.

[9] On 18 March, 2019, Ms. Chen 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 5 years, 6 months and 5 days.

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

[10] After processing and assessing Ms. Chen's application, the Immigration Department found that Ms. Chen had inadequate knowledge of English language to (i) fully comprehend basic English; (ii) write in English; and (iii) understand simplified interview questions, despite indicating in her citizenship Application that she is able to read and write in English.

[11] The Director of the Immigration Department had also relied on the provision of the Section 13 (2) of the Citizenship of Fiji Act 2009.

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

[12] In the Notice and Grounds of Appeal dated 23 March, 2021, Ms. Chen raised that the Department of Immigration:-

1. *Failed to detail in writing to her which clause(s) in the Citizenship Act 2009 requirement section that made her application unsuccessful.*

[13] While the Tribunal notes Ms. Chen's submission at paragraph 3, the opportunity was present for Ms. Chen 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. Chen had made an application for citizenship by naturalization. The gist of Ms. Chen's application is that she has been lawfully resident in Fiji for a period of 5 years, 6 months and 5 days, thus relying on section 11(2) of the Citizenship of Fiji Act 2009.

[18] Tribunal has referred to the letter dated 23 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>, whereby 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>.

[25] In Ms. Chen'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 application, the appeal cannot be allowed on that basis alone<sup>4</sup>'.

[26] Tribunal has noted the strenuous argument by counsel which is

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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

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

summed up in paragraph 15 of their submission that since 2013 Ms. Chen has spent a considerable amount of her time and resources in making Fiji her home through her business activities and engagement with local communities. 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. Chen's application was because of inadequacy of English language knowledge. There is no other ground of appeal challenging the correctness of the findings 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

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<sup>5</sup> Submission filed on behalf of Applicant at para 7 line 4 on pg 3

<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

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.

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

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

[36] There was no onus on the Minister to provide reasons for his refusal of her application as he had exercised his discretion purely on an administrative basis in accordance with the powers conferred upon him under section 13 (2) of the Citizenship Act.

[37] I refer to the decision of 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) in which Kermode J determined:

'The Applicant was seeking a right which the Minister was empowered to grant. His refusal to grant such right was in my view a proper exercise of his discretion provided in section 5 of the Act (Immigration).

The Minister in this instance was in my view acting in an administrative capacity and not in a quasi-judicial capacity. His decision in my view was an administrative decision and there was no obligation on him, in reaching a decision to consider and weigh submissions and arguments.

The grounds upon which he acted and the means which he

took to inform himself before acting were matters entirely within his discretion"

[37] Similar to this appeal, although the repealed legislation at that time was the Immigration Act, the Minister does not have to explain the reasons for exercising his discretion.

[38] In perusing the Affidavits, I find that there is sufficient reasons to refuse naturalization.

[39] Every intending citizen must be well versed with the English language as this is the secondary means of communication in Fiji. A failure to have at least mastered the basic knowledge despite having spent 5 years in Fiji reflects poorly on her intentions as being modest and pure.

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

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

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


**Orders**

[42] 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 60 days.***

  
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Resident Magistrate Mr. Thompson Lee  
Tribunal Member





Resident Magistrate Ms. Senikavika Jiuta  
Tribunal Member



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.