

**IN THE CITIZENSHIP APPEALS TRIBUNAL**  
**AT SUVA**

**CITIZENSHIP APPEALS TRIBUNAL CASE NO: HIM 1 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** : **JAYASHKUMAR MANSUKLAL TAILOR**  
*Appellant*

**AND** : **MINISTER FOR IMMIGRATION**  
*Respondent*

**Coram** : *Anjala Wati, Judge* - *Chair of the Tribunal.*  
*S. Qica, as RM then* - *Member of the Tribunal.*  
*T. Bainivalu, as RM then* - *Member of the Tribunal.*

**Counsel** : *Mr. D. Nair for the Appellant.*  
*Ms. S. Ali and Ms. G. Naigulevu for the Respondent.*

**Date of Judgment** : *12 April 2024.*

**DECISION**

**Wati. J; Chair of the Tribunal**

**Cause and Background**

[1] This is an appeal by Mr. Tailor against the decision of the Minister for Immigration. The Minister had the refused Mr. Tailor's application for citizenship by naturalization.

- [2] The decision to refuse the application was relayed to Mr. Taylor by a letter dated 4 February 2021. The material parts of the letter reads:

**“Re: APPLICATION FOR CITIZENSHIP BY NATURALIZATION.**

*I refer to your application for citizenship by naturalization dated 27.12.2019 and wish to advise that it has been declined on 03.02.2021.*

*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] Before I identify and outline the specific reasons for refusal of the application and the grounds of appeal, let me briefly indicate how Mr. Taylor arrived in Fiji.
- [4] Mr. Taylor is a citizen of India. He was born in Surat, India on 17 June 1965. He is now 58 years old.
- [5] Mr. Taylor first arrived in Fiji on 20 February 2000 on a visitors permit. He departed Fiji on 20 February 2009. While he was on a visitors permit, Argo Garments Limited applied for a short term work permit for Mr. Taylor.
- [6] The Department of Immigration granted Mr. Taylor a short term work permit from 14 September 2012 to 14 March 2013.
- [7] On 4 February 2013, Argo Garments Limited applied for a long term work permit for Mr. Taylor to work as a Ladies Garments Specialist. The Department of Immigration then granted Mr. Taylor a work permit for 3 years from 4 March 2013 to 4 March 2016.

- [8] Argo Garments Limited then again applied for a further extension of Mr. Tailor's long term work permit which was granted from 4 March 2016 to 18 May 2018. His wife was granted a co-existence residence permit to reside with him.
- [9] On 19 June 2017, Mr. Tailor resigned from Argo Garments Limited effective from 30 July 2017 to return to India to join his family business. His resignation letter stated that he did not intend to return to Fiji for any other work commitment.
- [10] The resignation letter reads:

***“Resignation***

*I, Jayesh Tailor would like to resign from Argo Garments Limited effective from 30<sup>th</sup> June 2017 and returning to India to join my family business.*

*My Son's in Surat, India have recently extended their business and have pressured me to join them and assist in their business.*

*I understand I am not full filling my terms at Argo Garments and the Management or any staff of Argo Garments Ltd has not pressured me in making this decision.*

*I do not intend to return to Fiji for any other work commitment.*

*Yours Sincerely  
Jayeshkumar Mansuskhal Tailor”*

- [11] On the same day of 19 June 2017, the Immigration Department received a letter from Argo Garments Limited. In that letter the Director of the Company expressed his disappointment with Mr. Tailor's sudden decision to return to India prior to the expiry of his work permit as considerable expenses were incurred. By the same letter a request was made for the refund of the cash bond.
- [12] The letter by Argo Garments Limited reads as follows:

***“Re: Jayesh Kumar Tailor – PWLN1520158***

*This is to inform that Jayesh Kumar M. Tailor who was granted a work permit (PWLN1520158) is resigning from Argo Garments Limited prior to completing his work permit term. Mr. Tailor together with his wife, Geetaben Tailor, are returning to India on July 7<sup>th</sup>, 2017.*

*We are very disappointed with his decision to leave prior to completing his term with Argo Garments as there was no pressure on him to come to this decision. His contribution in assisting and educating other team members was highly valuable but remains incomplete.*

*The garment industry is very scarce of skilled workers thus we look abroad to fulfil this vacuum so locals are trained. However, it is very disappointing when people depart midway through their term as lot of money is spent in this exercise.*

*We request the Immigration Department on their departure the cash bond held by your office for Mr. & Mrs. Jayesh Kumar Tailor be refunded to Argo Garments Limited.*

*Thanking you  
Jayant Jekishan  
Director"*

- [13] Mr. Tailor returned to India on 28 July 2017. When he was in India, O'Donnell Apparels Fiji Ltd. applied for a short term work permit for him to work as a Production Manager, which was approved by the Department from 30 August 2017 till 10 February 2018.
- [14] Thereafter, Mr. Tailor returned to Fiji to work. He departed Fiji on 9 February 2018.
- [15] On 22 May 2018, Vonu Apparel Pte Limited applied for a long term work permit for him which was granted by the Department from 26 July 2018 to 26 July 2020.
- [16] On 27 July 2019 and 11 April 2020, the Immigration Department received complaints from the Director of O'Donnell Apparels Fiji Ltd. against Mr. Tailor. It was alleged that Mr. Tailor was in violation of his employment contract as he was undertaking private work of tailoring and earning money which was an act in violation of his work permit. It was also alleged that Mr. Tailor was illegally remitting funds to India. The Director requested that Mr. Tailor's citizenship application be set aside pending investigation into the allegations. The complaints to the Immigration Department also stated that a

complaint had also been made to the Fiji Police and the Fiji Independent Commission Against Corruption.

- [17] On 17 July 2020, Vonu Apparel Pte Ltd wrote a letter to the Department informing that Mr. Tailor's contract of employment had been terminated due to non-performance. The letter to the Immigration Department reads as follows:

**"Re: Jayesh Mansukhlal Tailor**

*We write to inform the department that the above named person was an employee of Vonu Apparel Pte Ltd.*

*His work permit is valid from 26/07/2018 to 26/07/2020 and this letter serves to confirm the cancellation of his work permit due to his work contract being terminated as a result of non-performance.*

*We are sorry for the inconvenience caused as we are late in informing the department about the above matter.*

*Attached are his warning and termination letters respectively.*

*If you have any queries or require further information, please do not hesitate to contact the undersigned.*

*Levani Kurikou  
General Manager/ Vonu Apparels".*

- [18] The termination letter to Mr. Tailor reads as follows:

**"Termination of Employment**

*This is to inform that your employment contract has been terminated effective as of today 28<sup>th</sup> April 2020 due to your work performance.*

*The company wishes you all the best in future endeavours.*

*For further clarifications, please do not hesitate to contact the undersigned.*

*Levani K Masei  
General Manager"*

[19] Before Mr. Tailor was terminated, he was issued with warning letters. One of the warning letters appears in the affidavit of Shalini Devi, the Manager Passport and Citizenship in the employ of the respondent.

[20] The warning letter reads as follows:

**“Subject: Last Warning**

*Dear Jayesh,*

*This letter serves as a last warning about your performance of work with the company.*

*Findings are listed below:*

*1) Attention to detail – you are not paying enough attention to your work. You keep doing the same old mistakes when stitching garments incorrectly and wasting time in unpicking and re-stitching again. Cutting fabrics without successfully fulfilling what is required from markers, order papers and sample.*

*The company is on losses from extra cutting and recuts of fabrics from your incorrect cutting and fabrics that you damaged from unpicking.*

*2) Respect – Your acts are not professional. You seem to answer back to your superiors using words which you are not supposed to use. You act smarter saying you know everything when you are not.*

*Please try to understand the importance of your role when working as a team.*

*Sign on the space provided below that you have understood what is said above.*

*Levani K Masei  
General Manager”*

[21] On 27 December 2019, Mr. Tailor had lodged an application for citizenship, by naturalization, with the Department. His application was made pursuant to section 11(2) of the Citizenship of Fiji Act 2009 on the grounds that he had been in Fiji for a period of 5 years, 2 months and 1 week.

[22] On 16 April 2020, Mr. Tailor’s application was referred to the Compliance and Investigation section to investigate into the complaints lodged against him.

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

- [23] After the investigation, the Immigration Department found that Mr. Tailor had breached his work permit condition by working from home after his work permit had expired.
- [24] The Department also found that Mr. Tailor had inadequate knowledge of English language.
- [25] It is the position of the Department of Immigration that pursuant to s. 13(2) of the Citizenship of Fiji Act 2009, the Minister may refuse to grant citizenship to any person applying if the applicant fails to satisfy the Minister that the applicant is a person of good character and has adequate knowledge of the English language and of the responsibilities of a citizen of Fiji.

### ***Grounds of Appeal***

[26] Mr. Tailor has raised that the Department of Immigration has:

1. *Failed to provide valid reasons for declining the Fijian Citizenship by naturalization in its letter dated 4 February 2021.*
2. *Failed to perform its statutory obligation as required under s. 13(2) of the Citizenship of Fiji Act 2009.*
3. *Failed to take into account all relevant factors of the application including:*
  - (i) *The length of his residence in Fiji;*
  - (ii) *The specialized profession he is engaged in; and*
  - (iii) *His valuable contribution in the garment industry.*

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

[27] The Citizenship Appeals Tribunal is established under s. 21(2) of the Citizenship of Fiji Act 2009. Under s. 21(1), 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.

- [28] The Tribunal may, upon appeal, confirm, review or vary the decision appealed against and may order the payment of such costs as it thinks fit: s.21(5).
- [29] Mr. Tailor had made an application for citizenship by naturalization. His application was therefore guided by Part 4 of the Citizenship of Fiji Act 2009.
- [30] S.13 grants upon the Minister the discretion to grant or refuse to grant a certificate of naturalization to an applicant.
- [31] S.13(2) of the Act states that *“the Minister may refuse to grant a certificate of naturalization if the applicant fails to satisfy the Minister that the applicant is of good character; has adequate knowledge of the English language and of the responsibilities of a citizen of Fiji; and intends to continue to reside in Fiji.”*
- [32] Having referred to the relevant provisions of the law, I now turn to the grounds of appeal.
- [33] The first ground raised by Mr. Tailor is that the respondent failed to provide valid reasons for declining the application.
- [34] I have identified earlier the letter by which Mr. Tailor was informed that his application was declined. The contents of the letter has been referred to earlier.
- [35] Paragraph 2 of the letter clearly states that the applicant has failed to meet the requirements under 13(2) of the Act. It was also reflected in the letter that the respondent had in its possession documentary evidence to establish that.



- [36] 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.
- [37] There are three requirements set out in s. 13(2) 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.
- [38] The respondent argues that the 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.
- [39] I find that when the matter was before the Citizenship Appeals Tribunal, the specific reasons for refusal of the application was provided which was that the applicant is not a person of good character and that he does not have adequate knowledge of English language and of the responsibilities of a citizen of Fiji.
- [40] 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.
- [41] The Tribunal can require the respondent to provide specific reasons which I find has been clarified by the affidavit filed on behalf of the respondent.
- [42] The second ground of appeal states that the respondent has failed to perform its statutory obligation under s. 13(2) of the Act. The primary argument under this ground is that s.13 (2) requires the Minister to make the decision but the letter informing the appellant of the decision was written by the Acting Director of Immigration.

- [43] It is contended on behalf of the appellant that the Director of Immigration did not have the authority to make the decision.
- [44] Paragraph 25 of the affidavit of Shalini Devi, filed on behalf of the respondent, clearly indicates that the decision was made by the Minister to decline the application.
- [45] I find that although the letter was written by the Acting Director of Immigration, the decision was made by the Minister. The Acting Director of immigration only relayed the information in writing. She did not make the decision.
- [46] The Minister for Immigration at the time was the Prime Minister Honourable Josaia Voreqe Bainimarama. He deposed an affidavit on 30 August 2022. He has stated in no uncertain terms that he was the one who dealt with the application and declined the same as the applicant was unable to satisfy him that he was either of good character or that he had adequate knowledge of English language. Mr. Bainimarama's affidavit clearly dismisses Mr. Nair's argument that the decision was not made by the Minister.
- [47] There is therefore no basis to suggest that the Minister did not exercise his discretion properly under s. 13(2) of the Act.
- [48] The third ground of appeal states that the appellant had satisfied the requirements of section 9(1) of the Act. S. 9(1) of the Act does not apply to the applicant in this case. It applies to applicants who are applying for citizenship by Registration and not naturalization. In any event s. 9(1) states that "*any application for registration must be made to the Minister in the approved form*". Mr. Taylor's application was not declined for want of proper form.
- [49] I now turn to the final ground of appeal. It says that the respondent had failed to take into account all relevant factors of the application by the appellant which included his length of residence in Fiji, the specialized profession he was engaged in and his valuable contribution to the garment industry.

- [50] The appellant's counsel overlooks the legislative requirements in determining the application which is outlined in s. 13(2) of the Act and not what is identified by the appellant. 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 will be given a citizenship is a matter that will be considered on the factors outlined in s. 13(2).
- [51] There is no ground of appeal that challenges the correctness of the findings on good character and adequacy of English language knowledge. The Tribunal need not even revisit whether the Minister could arrive at a decision that the appellant was not a person of good character and that he did not have adequate knowledge of English. However, for the sake completeness, I will very briefly examine the evidence that led to the decision of the Minister.
- [52] When the appeal hearing was on foot, the Tribunal allowed one Ms. Ram, a Senior Immigration Officer, Citizenships Section to give further evidence. She was the person who received the application for Mr. Tailor for processing.
- [53] Ms. Ram testified on how applications are generally handled in naturalization sections. She stated that once applications are received, it is vetted to see if all documents are provided as per the checklist. If there is any pending document, the applicants are advised to submit the same.
- [54] Ms. Ram testified that if there are any red flags, it is sent to compliance for investigation. By red flag, she meant any suspicion surrounding the application.
- [55] It was testified that an English test is also conducted. The test has 4 sections. It has sections on speaking, reading, writing and understanding of the civic responsibilities.
- [56] Ms. Ram said that Mr. Tailor was contacted. He was asked to attend an interview through zoom. He did not understand the request for zoom so the Department conducted telephone interview.

- [57] To confirm whether it was Mr. Tailor answering the questions, the Department asked him to confirm his details. Mr. Tailor could only understand few basic questions such as name, date of birth and place of employment.
- [58] Ms. Ram said she conducted the telephone interview. This was done prior to the investigation by compliance team. Ms. Ram said she advised Mr. Tailor that she will ask him some questions regarding him and the history, culture and the Constitution of Fiji.
- [59] Mr. Tailor was unable to answer most of the questions asked for example he could not state his responsibilities if he was granted a citizenship. He remained silent when he was asked the questions. Some questions were rephrased and Mr. Tailor could not answer even then.
- [60] Ms. Ram said that at the end of the telephone process, she asked the Compliance Team to verify if he could read and write in English. She said she did that because she could not complete the telephone process. She was only able to complete 2 sections of the test.
- [61] The Compliance Team informed that Mr. Tailor could not read. He was given a script to read.
- [62] The final assessment by the Department was that Mr. Tailor had failed to meet the aggregate level of English. It was also reflected that for his visa applications, the appellant was always accompanied by an interpreter.
- [63] Given the extensive and unchallenged evidence of Ms. Ram, there is no reason to discredit her evidence that Mr. Tailor could not satisfy the Compliance Team and Ms. Ram that he had adequate knowledge of English language. Apart from answering his personal details question, he could not answer most of the questions. He could not even read. It is the law of this country that anyone who wants to be a citizen of this country must demonstrate that he or she has adequate knowledge in English language and of the civic responsibilities

as a citizen. Mr. Taylor could not meet that requirement. He therefore could not satisfy the Minister on the requirements of s. 13(2).

- [64] If the applicant is challenging that that assessment by the Minister was wrong, he could have asked the Tribunal for a chance to clarify that he had adequate knowledge of English Language. He could have addressed the Tribunal in English. He chose not to contradict the Immigration Department's evidence through his own. He did not, because, he could not. The Tribunal finds that he does not understand English. He cannot speak in English. He cannot read English. How could he then expect and require the Minister to go past the requirements of the law?
- [65] The other basis on which Mr. Taylor's application was refused was that he was not a person of good character. The Immigration Department had before it complaints from his former employer.
- [66] Mr. Taylor's work was terminated with effect from 28 April 2020. His work permit was valid from 26 July 2018 to 26<sup>th</sup> July 2020. His work permit stated that he was permitted to reside in Fiji and work as Production Manager and Designer Pattern Maker for Vonu Apparel.
- [67] When his work was terminated, his work permit could not be used to work for himself. He could not operate a private business from home. The investigation by the Compliance and Investigation Team on 11 June 2020 established that the applicant was not working for Vonu Apparel as required by the work permit but for himself. He could not do that without the approval of the Immigration Department. He should have also informed the Immigration Department of the termination of his employment if he was honest in his conduct. He did not do that because that would have forced him to leave the country.
- [68] Mr. Taylor did not distinguish the right from the wrong. He did not behave in an ethical manner when he continued to reside in Fiji after his work was terminated. He continued to operate his tailoring business from home.

[69] The good character requirement looks at the essence of the applicant and his behaviour as being a manifestation of his essential characteristic. If the applicant could not abide by the conditions of his work permit, has he followed the rules and values of Fijian society? The Tribunal does not find that he has obeyed the laws of this country which can be ignored.

[70] In *Irving v. Minister for Immigration, Local Government and Ethnic Affairs* (1996) 68 FCR 422 at [431] – [432], the full Federal Court of Australia said that good character should be taken to be used in their ordinary sense, namely, a reference to the enduring moral qualities of a person and not to the good standing, fame or repute of that person in community. It was said that the former is an objective assessment apt to be proved as a fact whilst the latter is a review of subjective public opinion.

[71] All the character references provided by the applicant does not diminish the fact that Mr. Tailor did not comply with the laws of this country. He kept quiet after his contract of employment was terminated and worked for himself. He had breached his work permit. That was sufficient for the Minister to arrive at a decision that Mr. Tailor was not a person of good character.

### ***Result***

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

[73] 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.

***Qica, J;***        ***Member of the Tribunal***

[74] I have read the Judgment of Wati, J; and agree with her reasons and findings. The appeal ought to be dismissed with costs.

**T. Bainivalu;**            **Member of the Tribunal**

[75] I agree with the findings and orders of Wati, J. This appeal should be dismissed with costs.

**Orders**

[76] The orders of the Tribunal are:

- (i) *The appeal is dismissed.*
- (ii) *The appellant is to pay to the respondent costs of the appeal proceedings in the sum of \$3,500 within 21 days.*



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**Hon. Justice Anjala Wati**  
CHAIR

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**Hon. Justice Samuela Qica**  
MEMBER

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**Resident Magistrate Tomasi Bainivalu**  
MEMBER

**Solicitors:**

M/S Pillai Naidu & Associates for the Appellant.  
Office of the Attorney General for the Respondent.  
File: HIM 1 of 2021.