

IN THE CITIZENSHIP APPEALS TRIBUNAL
AT SUVA

CITIZENSHIP APPEALS TRIBUNAL CASE NO: HIM 1 OF 2020

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 : **MUHAMMAD ASHRAF** *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 : *Appellant in Person*
Ms. S. Taukei and Ms. T. Cagilaba for the Respondent

Date of Judgment : *19 April 2024*

DECISION

Wati, J: **Chair of the Tribunal**

Cause and Background

- [1] Muhammad Ashraf ("*Ashraf*") applied for a Fijian citizenship which was refused by the Minister for Immigration. He appeals against that decision.

- [2] The decision to decline the citizenship was made on 3 June 2020. The reasons are noted in the letter of that date. The material parts of the letter reads:

"Pursuant to section 8(6) of the Citizenship Act 2009, the Minister may refuse the application if the applicant fails to satisfy the Minister that the applicant is a person of good character.

Please note that you have not met the legal requirements under the Citizenship Act 2009 as you have an adverse police record as confirmed by the Australian Federal Police Criminal Records dated 01.02.2019...".

- [3] Ashraf is a former citizen of Fiji. He acquired Australian citizenship on 26 January 1990. His application for citizenship was made under s. 8(6) of the Citizenship of Fiji Act 2009.

The Appeal

- [4] The appeal challenges the Minister's decision that the appellant is not a person of good character.
- [5] The appellant argues that it was a one-off situation which gave rise to him being charged. He says that he was not convicted of the charges.
- [6] He explains the situation which gave rise to the charges. According to Ashraf, he was repairing his utility vehicle. A family friend was assisting him.
- [7] The target was to have the vehicle back on the road the following day. In the middle of repairing the vehicle, his son would continuously excuse himself to answer his phone and send messages.
- [8] Ashraf said that this act continued for a while which caused him to snap. Ashraf said that he asked his son what was so important that he could not leave it aside for a while and concentrate on helping him to get the vehicle repaired for work as it was urgent.
- [9] Ashraf said he asked his son for the mobile phone. The son blatantly refused to hand it to him. The son had a firm hold on the mobile phone and resisted giving it to him. Ashraf says that seeing the resistance, he knew that there was more than just simple messaging.

- [10] Ashraf then forced the mobile phone off the son and smashed it on the concrete. Ashraf says that his son did have a small scratch in the scuffle.
- [11] He says he asked the son to go inside the house, have shower and stay inside. The son called the police from inside the house while he continued working on the vehicle with his friend.
- [12] Ashraf says that his actions were not intended to injure his child but to discipline him. He was charged for assault occasioning actual bodily harm and destroying or damaging property to the value of \$2,000. He says he was discharged without conviction.
- [13] He says he is not a bad parent. He says his son is into drugs as all phone messaging was related to drug dealings and having under aged girlfriends and sneaking out of school.
- [14] Ashraf says that when he was waiting for the appeal to be heard, he went to the National Crime-Check Authority to see why they had to mention such a trivial and non-significant matter in a police report which was affecting his reputation and integrity.
- [15] He says that he received another police report which now says he has “no criminal history”. He attached that report for the Tribunal’s reference.

Law and Analysis

- [16] Section 8(6) of the Act states that “*an application for citizenship by registration made by an adult who is a citizen of another country must be granted if the person was formerly a citizen of the State save that the Minister may refuse the application if the applicant fails to satisfy the Minister that the applicant is a person of good character*”.
- [17] The police report of the applicant shows that he was found guilty of two counts of domestic violence offence. The first was assault occasioning actual bodily harm and the second was destroying or damaging property less than or equivalent to the value of \$2,000. For both counts, Ashraf was granted a conditional release for 18 months starting 1 February 2019 to 31 July 2020. No convictions were recorded.
- [18] To assess whether Ashraf was a person of “*good character*”, it is immaterial that no conviction was recorded when he was found guilty of two counts of domestic violence offence. It has to be

assessed whether he has moral qualities, whether he is able to distinguish the right from the wrong and whether he is a person who will be able to obey the laws of this country.

- [19] The applicant as a father continues to assert that he was not convicted and so a person of good character. He fails to realize that he had assaulted his son and damaged his property in a fit of rage. This conduct of his in no way demonstrates that he wanted to discipline his child. He was venting his anger out when his 15 year old son did not help him as expected by him.
- [20] Instead of accepting responsibility for his conduct and being remorseful for what he did, his entire appeal submission is blaming the Australian police for intervening in his actions to discipline the child and protecting the child. He is asserting that he would not have been subjected to the same behavior if he did that to his child in Fiji.
- [21] Ashraf is enraged that the police should not have responded in the way they did and treat him like a criminal. He still feels that he is entitled to do what he did on the day as that is what parenting requires.
- [22] He also blames his son for being involved in drugs and having under aged girlfriends.
- [23] The position of the appellant does not show that he accepts that domestic violence is a serious offence. His demeanour to the Tribunal did not show that he is at all remorseful for his conduct.
- [24] Domestic Violence is a very serious offence in Fiji. Child abuse is treated equally seriously. In Fiji, the child's interest is considered as paramount. Ashraf's expectation that this country and the Courts in Fiji would have treated him leniently or ignored his conduct is sheer ignorance on his part. He is sadly mistaken that this country and the Courts in Fiji would have treated him leniently for the same conduct. That kind of parenting is not supported by our laws.
- [25] Ashraf asserts that he is a person of good character. As a father, if he knows about his son's problems, he should attend to that in the most humble manner for the son to respond positively. There are children who do find themselves in difficult situations. They need all the help and guidance. Knowing his son's problems, Ashraf resorts to violence and now continues to blame his son for being a bad child. That is most concerning. He is yet not able to realize the shortfall in his

conduct which is not helping his child. His conduct did not protect the interest of the child and the continued blaming of the child does not reflect that Ashraf is acting in the interest of his child.

[26] The incident may be “one- off” situation but the attitude of the appellant post-conviction does not show any remorse, humility and respect. Ashraf’s attitude shows that he is not able to distinguish the right from the wrong. His conduct does not satisfy me that Ashraf will be able to respect the laws of this country.

[27] I am not satisfied that Ashraf has accepted responsibility for his conduct and has shown any remorse. He produces a police report after completion of his condition not to re-offend in the next 18 months. That report shows no disclosable court outcomes. This is only because the condition of the release has been complied with. The purpose of producing the report is to show that the offence was trivial and that he has no convictions. This attitude lacks remorse and acceptance of responsibility.

[28] Ashraf has not shown that he has changed in his behaviour as a parent. His attitude and remarks shows that he has little care and concern about his violence towards the son.

[29] The Tribunal is of the view that given the seriousness of the offence and given Mr. Ashraf’s attitude as seen and noted by the Tribunal, it is not satisfied that he is a person of good character.

Result

[30] The Minister was correct in arriving at a decision that the appellant is not a person of good character and as such he was not entitled to be granted a citizenship. The appeal ought to be dismissed with costs of \$3,500 against the appellant to be paid within 21 days.

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

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

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

[32] I concur with the findings and orders of Wati, J.

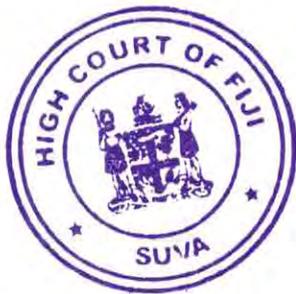
Orders

[33] 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.*



Hon. Justice Anjala Wati
CHAIR



Hon. Justice Samuela Qica
MEMBER



Resident Magistrate Tomasi Bainivalu
MEMBER

Solicitors:

Appellant in Person.
Office of the Attorney General for the Respondent.
File: HIM 1 of 2020.