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REPUBLIC OF MARSHALL ISLANDS

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

IN RE PETITION FOR CITIZENSHIP)	CIVIL ACTION No. 2010-114
)	
)	
)	ORDER DENYING PETITION FOR
BY KARUA TAMUERA,)	CITIZENSHIP BY REGISTRATION
)	BASED UPON DESCENT
petitioner.)	
)	
)	
)	

TO: TALAFOU MANASE, MLSC, counsel for petitioner
JACK JORBON, Assistant Attorney-General, counsel for the Republic

Summary Decision

On April 17, 2013, this matter came before the Court on the Petitioner’s July 26, 2010 Petition for Citizenship by Registration. The Petitioner sought citizenship by registration based upon *Marshallese descent* under Article XI, Section 2(1)(c) of the Constitution. Article XI, Section 2 provides for citizenship by registration based upon any one of three grounds: land rights, being the parent of a child that is a citizen of the Republic, and *Marshallese descent*.

Section 2(1) reads as follows:

Section 2. Persons Who May Be Registered as Citizens.

(1) Unless disqualified pursuant to paragraph (3) of this Section, any person who is not a citizen of the Republic of the Marshall Islands shall become a citizen by registration if, upon application, the High Court is satisfied either:

- (a) that he has land rights; or
- (b) that he has been resident in the Republic for not less than 3 years, and is the parent of a child who is a citizen of the Republic; or

(c) that he is of Marshallese descent, and that in the interests of justice his application should be granted.

(2) A person who has attained the age of 18 years shall not be registered pursuant to this Section as a citizen of the Republic, until he has taken an oath or made an affirmation of allegiance to the Republic.

(3) In the interests of national security or policy with respect to dual citizenship, the Nitijela may by Act provide for the disqualification of any class of persons who would otherwise be entitled to be registered as citizens pursuant to this Section, but who have not already been so registered. *(Emphasis Added.)*

Accordingly, under Section 2(1)(c) [read with Section 2(3)], a petitioner for citizenship by registration based upon *Marshallese descent* must establish three things: (1) that the petitioner is of Marshallese descent, (2) that in the interest of justice the petition should be granted, and (3) the petitioner is not disqualified in the interests of national security. Although the Court finds that the Petitioner is of Marshallese descent and is not disqualified in the interests of national security, the Court does not find that it is in the interests of justice to grant the petition or that denying the petition would create an injustice. The Petitioner can seek Marshallese citizenship by naturalization under the Citizenship Act 1984, 43 MIRC 4. Accordingly, the Court denies the petition.

Interest of Justice

In the context of citizenship by registration based upon Marshallese descent, what does “in the interests of justice” mean? In the absence of Marshall Islands statutes, regulations, caselaw, or constitutional records, and in the absence of caselaw from jurisdictions with similar constitutional language regarding citizenship, the High Court has looked to caselaw from other jurisdictions construing similar language in statutes and court rules. That is, in a February 27, 2012 order (“February 27 Order”), the High Court in CA Nos. 2009-239, 2010-183, and 2010-184 looked to the decisions construing criminal rules, juvenile statutes, and venue rules. As a

result of its review, the Court, at page 9, concluded that “Courts, in interpreting ‘the interests of justice’ have resorted to a balancing test, weighing a number of factors designed to reflect the interests of the various parties and the public. This suggests that in a citizenship case brought under the Marshallese descent/interest of justice provision of the Constitution, the court must (1) identify the affected interests, (2) establish appropriate factors for consideration of these interests and (3) weigh these various factors to determine the interests of justice.”

In its February 27 Order, the Court identified 13 factors that could be considered in the interest of justice determination. The factors, listed on pages 11 and 12, included factors affecting a petitioner’s interest, the public or national interest, and the interests of current citizens. In the present case, after considering these interests, factors, and the facts presented, the Court does not find that granting the petition is in the interests of justice or that denying the petition would create an injustice.

Factual Background

At the April 17, 2013 hearing on the petition, the Court received testimony from the Petitioner and her witness Willie Mwekto, and the Court received testimony from the Republic’s two witnesses: Director Barry Lokeijak of the Labor Division, Ministry of Foreign Affairs; and Deputy Director Tanga Lanwi of the Immigration Division, Office of the Attorney-General. The Court also admitted into evidence the Petitioner’s Exhibits A through T. From this evidence, the Court makes the following findings of fact.

The Petitioner entered the Marshall Islands in April 2009 seeking citizenship. At the time she entered, the Immigration Division’s Deputy Director Tanga Lanwi told Petitioner that she could stay for a year and apply to be a citizen. The Petitioner filed her petition for citizenship in

July 2010 and has stayed in the Marshall Islands for another three years: a total of four years. It appears that the Republic has declined to take any steps to remove the Petitioner as an overstayer.

In support of her petition, the Petitioner has received criminal record clearances from police departments in both Kiribati and in the Marshall Islands, has received health clearances from the Republic's Ministry of Health, and has received a national security clearance from the Minister of Justice. The most recent clearances are almost two years old: they are from May 2011. However, the Republic did not offer any evidence of subsequent convictions, health problems, or national security concerns or to object to the clearances as dated. It is from this evidence that the Court finds that the Petitioner is not a risk to national security.

The clearances weigh in the Petitioner's favor. The same is not true for Petitioner's education and work history.

The Petitioner graduated from high school in Kiribati in 1991, and between 2003 and 2005 she attended classes at the University of the South Pacific Center and at technical institutions in Kiribati. The Petitioner has been employed by several entities, at least eight, between 1997 and the present. In the Marshall Islands, she has worked for four employers: Marshall Islands Fishing Venture as a timekeeper; Marshall Islands High School as a temporary teacher; the Bank of Guam on probation; and EZ Price as Neal Skinner's secretary (or domestic worker). However, with gaps in employment since graduation from high school totaling approximately nine years, the Petitioner has not acquired a specific or special trade or skill. She is competing with Marshall Islands citizens and legal residents for work.

Moreover, the testimony of the Labor Division's Director Barry Lokeijak establishes that

in the Marshall Islands the Petitioner does not have a good work history, working at jobs for a few months and then getting into arguments with fellow employees and leaving. Furthermore, the Petitioner only obtained a work permit to lawfully work in the Marshall Islands for the MIFV, not the others. However, as with the alleged immigration violations, it appears that the Republic has declined take action against the Petitioner for labor violations.

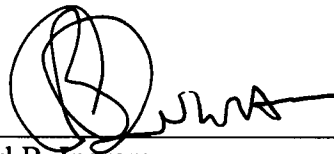
Additionally, the Petitioner has not established that she has the means to support herself and her family. Apparently she works for Neil Skinner not as a secretary (as initially reported) but as a part-time domestic worker, at an unskilled or low skilled job. The Petitioner reports that she has a husband and two children living with her in the Marshall Islands. She did not say if her husband and children were are citizens or legal resident of the Marshall Islands. Their immigration status was not established. Further, the Petitioner reported that her husband was not employed, but he went fishing for the family's needs. Currently Petitioner and her family live with a maternal uncle in Small Island, Majuro Atoll, and she receives money from a grandmother in the United States. In summary, the Petitioner has a nuclear family of four, and receives help from other family members to meet ends. She is not a single person that represents a lesser burden on society. She and her family are not self-supporting.

Although the Petitioner does have family members living in the Marshall Islands, 13 generations separate her and Marshallese man from whom she claims descent, Lowodbako. Lowodbako left the Marshall Islands for Kiribati during German times, about 100 years ago. This connection is too remote to establish land rights in the Marshall Islands. As the High Court noted in its February 27 Order, at page 4, land rights through the male diminish over time and conclude with the seventh generation.

Further, the Petitioner claims to have knowledge to the Marshallese language, custom, and history. And the Petitioner maintains that the Marshalls is a safer place to raise a family than Kiribati. The Petitioner, however, did not establish any exceptional circumstances that surround her application (e.g., fleeing spouse abuse). She has not established the nature or magnitude of the violence in Kiribati that she seeks to leave behind. The Court is not aware of any civil strife or violence in Kiribati that would cause people to flee or that would support a claim of asylum. Even if there were civil strife in Kiribati, it is not clear that the Marshall Islands could accept an influx of asylum seekers.

It may be that the Petitioner wants to immigrate to the Marshall Islands because is a good place to raise a family and that there are job opportunities here, but, after weighing the relevant factors and facts, the Court does not find granting the petition is in the interest of justice or that denying it would create an injustice. As noted above, the Petitioner can seek Marshallese citizenship by naturalization.

Date: April 25, 2013.

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a series of loops and a long horizontal stroke extending to the right.

Carl B. Ingram
Chief Justice, High Court