

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0013 OF 1995

(High Court Judicial Review No. 21 of 1990)

BETWEENMO XING BOAPPELLANT

and

THE PRINCIPAL IMMIGRATION OFFICER
THE MINISTER FOR HOME AFFAIRSRESPONDENTSMr H. M. Patel for the Appellant
Mr I. V. Tuberi for the RespondentDate and Place of Hearing : 10 August, 1995
Date of Delivery of Judgment : 11 August, 1995JUDGMENT

This is an appeal against a decision of Byrne J. delivered on 9 February 1995. The appellant claimed a judicial review in the form of certiorari to quash a decision of the Principal Immigration Officer. That decision was made about the 18 June 1990 to seize Republic of Fiji Passport No. 278247 in the name of the appellant and not return it to him. Section 7(1) of the Passport Act Cap. 89 is as follows:-

"It shall be lawful for the Passport Officer, any immigration officer or police officer to take and retain possession of any passport in any case where he has good reason to believe that the passport is in the wrongful possession of any person, or that the passport or a renewal or endorsement in respect thereto has been obtained by means of any false or misleading representation or of any statement that is false or calculated to mislead in a material particular."

On 20 June 1990 Jayaratne J. granted the appellant leave to apply for judicial review and ordered that the Minister of Home Affairs and the Principal Immigration Officer should not take action to deport the appellant until further order of the court. Byrne J. dismissed the application for judicial review and held that the decision of the Principal Immigration Officer was justified.

The appellant arrived in Fiji from the the Republic of China on 18 June 1990. His passport was taken from him when he arrived at Nadi Airport. The appellant said that he was born in Fiji on the 23 September 1959 in Rakiraki and that he resided there until he left with his parents for the Republic of China at the age of about five years. He said that a birth certificate was issued in his name by the Registrar of Births in Fiji. He gave, however, contradictory evidence as to the way in which he obtained his birth certificate. At one stage he said that the birth certificate was obtained for him by a Chinese man called Mr Wong who was his agent; at another stage he appeared to say he gave the certificate to Mr Wong. The birth certificate cannot now be located and there is no record in the Registrar of Births of the issue of the birth certificate.

In a full and careful decision Byrne J. set out a series of answers given in evidence by the appellant before the judge which contradicted answers he had given to interrogatories. Understandably on the evidence set out in the learned judge's

decision, he said that he found the appellant an unsatisfactory witness. Reading through the decision and the evidence given both on affidavit and viva voce one is left with considerable doubt as to the way in which the birth certificate, if there was one, was obtained and the way in which the Fiji passport was obtained. His Lordship further commented that it was significant that the applicant did not call Mr Wong who, he said, obtained his Fiji passport for him.

It is clear however, that he came to Fiji in 1989 on a passport issued by the Republic of China. Although he attempted to deny that he was a citizen of Republic of China the fact that he had the Chinese passport was clearly established both by the answers that he gave and by the record of his arrival in Fiji in 1989. He agreed he could only have obtained the Chinese passport if he was a citizen of China.

The matter before the court therefore is put beyond doubt by section 28 of the Constitution of Fiji which is as follows:-

"(1) *Subject to the other provisions of this section a person shall forfeit forthwith his Fiji citizenship if he acquires or retains the citizenship or nationality of a country other than Fiji.*

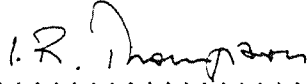
- (2) Any registration of a person as a citizen of Fiji or the grant of a certificate of naturalisation to a person who is a citizen of a country other than Fiji at the time of such registration or grant shall be conditional upon effective renunciation of the citizenship or nationality of that other country within a period of not more than 12 months from the date of such registration or grant.
- (3) A citizen of Fiji by birth shall not forfeit his Fiji citizenship if, within twelve months of the commencement of this Constitution or within twelve months after he attains the age of 21 years (whichever is the later) he renounces the citizenship or nationality of any other country which he may possess."

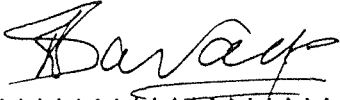
Section 16 of the Fiji Citizenship Act Cap. 87 also states that any citizen of Fiji who is also a national or citizen of some other country who has attained the age of 21 years shall within 12 months of attaining that age renounce the nationality or citizenship of the other country. If he fails to do so he shall cease to be a citizen of Fiji.

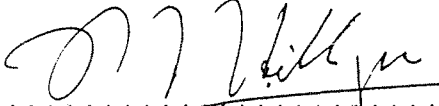
The appellant says he was born on 23 September 1959. He therefore, attained the age of 21 on 23 September 1980. As the appellant had not renounced his Chinese citizenship by the 23 September 1981, he was not entitled to obtain a Fiji passport when he applied for a passport in 1989 on the ground he was born in Fiji and was therefore, a national of Fiji.

The learned judge found on the applicant's admissions and on his affidavit that he has been and at all relevant times was a citizen of People's Republic of China. In our view the refusal to grant judicial review was well justified.

The appeal is dismissed with costs against the appellant. The consequential order made by Jayaratne J. is set aside.


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Mr Justice I.R. Thompson
Judge of Appeal


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Mr Justice Savage
Judge of Appeal


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Mr Justice P.G. Hillier
Judge of Appeal