

IN THE CITIZENSHIP APPEALS  
TRIBUNAL AT SUVA

CENTRAL DIVISION

CITIZENSHIP APPEALS TRIBUNAL CASE NO: HIM 02  
OF 2024

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

XIN ZHANG

Appellant

AND

MINISTER FOR IMMIGRATION

Respondent

Coram

Senileba LTT Waqainabete-Levaci, Judge

T. Lee, RM

Counsel

Mr. Faktaufon V. for the Appellant

Mr. Nawaikula P. for the Respondent

Date of Judgment

9<sup>TH</sup> May, 2025

DECISION

Waqainabete-Levaci, S.L.T.T, Judge and Chair of the Tribunal

Application for Appeal

[1] Mr. Xin Zhang being aggrieved by the decision of the Minister

for Immigration, appealed the decision to refuse his application for citizenship by naturalization.

- [2] Mr. Zhang was advised of the decision in a letter dated 29<sup>th</sup> January, 2024, which reads:

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

*Reference is made to your application for Citizenship under 11 (2) Category. A refusal decision has been made on your application.*

*The Department has established that you failed to meet the Criteria prescribed in Part 4 Section 13 (2) a of the Citizenship Act 2009, therefore, do not qualify for Citizenship.*

*You may appeal the decision in writing 14 days from the date of this letter to the Citizenship Appeals Tribunal at the High Court Registry."*

- [3] On the 15<sup>th</sup> of March, 2024 the Appellant filed this Notice and Grounds of Appeal and on 15<sup>th</sup> of May, 2024 the Appellant filed his Affidavit in Support. Affidavit in Opposition was filed on 17<sup>th</sup> of July, 2024.

- [3A] On the 9<sup>th</sup> of April 2025, the Court issued a Noah and called parties into the Tribunal to brief them that Ms Senikavika Jiuta, a Tribunal member was no longer sitting. They agreed to accept the judgment delivered by two members of the Tribunal.

**Background**

- [4] Mr. Zhang is a citizen of the People's Republic of China. He first arrived in Fiji on 7 October, 2012 on a work permit and was employed by Alisha 88 as a Shop Manager. The work permit

was valid from 28 September, 2012 for three (3) years. Mr. Zhang departed Fiji on 9 August, 2014 before the expiration of the visa. On 29 September, 2015 the Department of Immigration granted Mr. Zhang a work permit to work for Alisha 88. The work permit for 3 years from 29 September, 2015 to 29 September, 2018 and was further extended from 14 June, 2019 to 14 June, 2020.

- [5] Alisha 88 is a company owned by his brother-in-law. He was involved in the day-to-day operations of the bakery. In the interest of better understanding the English language, he was enrolled at USP for English Language classes.
- [6] On 9 August, 2014 Mr. Zhang returned to China to undergo bakery training.
- [7] On 23 July, 2018, Mr. Zhang lodged an application to the Department of Immigration to confirm if he had qualified to apply for citizenship by naturalization. On 13 June, 2019 he was informed that he was only in Fiji for 4 years, 6 months and 12 days or 1652 days (not 5years) in the 10 years immediately before his application.
- [8] On 6 February, 2020 Mr. Zhang again made another application seeking for confirmation of his qualification to apply for citizenship by naturalization. On the 11th of February, 2020 a written letter from the Director of Immigration informed him that he qualified to apply for citizenship by naturalization.
- [9] Mr Zhang then made an application to extend his work permit in Fiji. On 16th of July, 2020 the Immigration Department wrote to Mr. Zhang's employer advising him his application for a work permit was declined as his position could be filled by a local. Despite an appeal by his employer

on 24th of July, 2020, he was advised on 5<sup>th</sup> August 2020 that his application was refused.

[10] Mr. Zhang filed a Notice of Appeal on the 6<sup>th</sup> of February, 2024. On the 15<sup>th</sup> of March, 2024 the Appellant Counsel admitted to the Tribunal that the Appellant did not comply with Rule 3 (4) of the Citizenship Appeals Tribunal Rules of 2011 requiring an endorsement by the Minister on service received within 5 days. Consequently, the Notice of Appeal was deemed abandoned pursuant to Rule 3 (6) of the Citizenship Appeal Tribunal Rules of 2011.

[11] On the same day, he filed another Notice of Appeal together with the Grounds of Appeal.

### **Issues**

[12] The issues that this Tribunal needs to determine are as follows:

- (a) Is the Appeal within time; and
- (b) Grounds of appeal.

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

[13] In the Notice and Grounds of Appeal dated 15 March, 2024 Mr. Zhang's appeal as follows:-

- i. *That the Appellant does not have any criminal records against him in Fiji nor in China.*
- ii. *That since the Appellant arrived in Fiji, he has always lived with his brother-in-law and sister at Howell Road.*
- iii. *That the Appellant is of good character and is*

trustworthy.

- iv. That the appellant had submitted his Character Reference with his initial application under naturalization.
- v. That the Appellant is hardworking and reliable.
- vi. That the Appellant intends to settle down in Fiji and help his brother-in-law and sister operate their shops and bakery in Suva.
- vii. That there has never been any complaints against the Appellant.
- viii. That the Appellant has qualified to be a citizen by way of naturalization.
- ix. That the Appellant seeks to overturn the decision of the Minister and be granted Citizenship.

### ***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] The Tribunal will first address the issue of appeal out of time then it will move on to discuss grounds of appeal.

### **Appeal Out of Time**

[18] The initial Notice and Grounds of Appeal filed by the Appellant on the 6<sup>th</sup> of January, 2024 was deemed abandoned pursuant to Rule 3 (4) of the Citizenship Appeals Tribunal Rules 2011.

[19] Rule 3 (7) of the Citizenship Appeal Tribunal Rules 2011 clearly state that:

*"The appellant may apply in writing to the chairperson of the Tribunal for extension of time for service under rule 3(3) prior to expiry of the 14-day period prescribed in rule 3(3) and the chairperson may extend the time for service if the chairperson considered the extension of time to be reasonable."*

[20] According to the submissions by the Appellant, the abandoned Notice and Grounds of Appeal was in fact filed in time. The Appellant are of the view that the abandoned application was due to an error which supposedly allowed for a re-lodgment of this application.

[21] The Respondent submitted that the Appellant are to comply with Rule 3 (7) of the Citizenship Appeal Tribunal Rules of 2011. It was also submitted that the Appellant should have sought for enlargement of time pursuant to Order 2 Rule 2 of the Magistrates Act Rules which they have not complied with.

[22] Rule 11 of the Citizenship Appeals Tribunal Rules of 2011 state as follows:

*"If there is no provision in these Rules to meet the circumstances arising in any matter, the Tribunal may be guided by any relevant provision in the Magistrates Court Rules 1945."*

[23] Order 2 Rule 2 of the Magistrates Court Rules 1945 clearly outlines that

*"Parties may, by consent, enlarge or abridge any of the times fixed for taking any step, or filing any document, or giving any notice, in any suit. Where such consent cannot be obtained, either party may apply to the court for an order to effect the object sought to have been obtained with the consent of the other party, and such order may be made although the application for the order is not made until after the expiration of the time allowed or appointed."*

[24] The Appellant had reasons to believe that there was no need to comply with Rule 3(7) of the Citizenship Appeal Tribunal Rules of 2011 and Order 2 Rule 2 of the Magistrate Act Rules is unjustified and lacks any legal merit.

[25] While the Tribunal may have allowed for parties to file submissions, the parties are bound by the Rules that they each need to comply with. The initial application was withdrawn by the Applicant on his own application. In filing the amended application to appeal, they supposedly were of the view that there was no need to file for an application for extension of time.

[26] The Tribunal has determined that given that the Appeal was re-filed, the period of re-filing fell outside of the 14 day period and hence the application is deemed abandoned.

[27] For completeness sake, the Tribunal will also deal with the Grounds of Appeal and determine accordingly.

### **Grounds of Appeal**

[28] Mr. Zhang had made two applications to the Department of Immigration. One was an application for citizenship by naturalization and another was for an issuance of another work permit. Both were dealt with by the Director of Immigration. Both were refused.

[29] The application for which the Tribunal will deal with is his application for citizenship by naturalization made on 11 February 2020. The gist of Mr. Zhang's application is that he had complied with the requirements of good character except where he did not leave the country when he was supposed to and his work permit was also not approved.

[30] On the 29<sup>th</sup> of August 2024, the Director Immigration refused his application for citizenship by naturalization. The letter is self-explanatory.

[31] Paragraph 2 of the letter clearly states that the Appellant has failed to meet the requirements under 13(2) of the Citizenship Act more particularly that he was 'of good character'.

[32] As earlier alluded to, Mr. Zhang's work permit was declined on 16<sup>th</sup> of July, 2020. Despite appealing on 5<sup>th</sup> August, 2020, the Minister of Immigration clearly stated that the appeal was dismissed and that the Appellant and his family were residing illegally in Fiji.

[33] Having understood that his status in Fiji was no longer legal, the Appellant continued to reside in Fiji as a result of the pandemic COVID 19, international borders were closed.

[34] The Appellant did not tender any evidences that he had exhausted all avenues to attempt to leave Fiji in compliance the



immigration laws when he was notified his work permit has been cancelled.

[35] The appellant also submitted that due to the difficulties to leave the country, Mr. Zhang had approached one Mereia Luvunakoro an immigration officer who advised him he could remain in the country whilst his application for citizenship was still being processed. There was no documentation of this waiver being granted by the immigration officer nor was the immigration officer's evidence presented to Court. This argument is not substantiated and lacks credibility.

[36] In the recent ruling of Taylor v Minister of Immigration<sup>1</sup>, 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>'.

[37] 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>.

[38] In Mr. Zhang'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

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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

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>.

- [39] Mr. Zhang was denied his work permit in July 2020, close to 5 years after being denied, he continues to live in the country as a an illegal immigrant.
- [40] 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.
- [41] The failure by the Appellant to comply with Immigration laws of Fiji is a reflection of his character. It may be a technical oversight to him, but when viewed objectively, is a blatant act of defiant against the laws of Fiji.
- [42] Mr Zhang has for all intent and purposes, assumed that he can remain in Fiji whilst he lodges and awaits his appeal. Mr Zhang has also taken the liberty not to appear at the Tribunal as well. No such power is granted to the Tribunal to allow for an applicant to remain in country when he is no longer legally allowed to do so. Unless the Tribunal exercises that power to confirm, review or vary the decision of the Minister, the pending Appeal does not in any way give liberty to a foreign national to remain in resident in Fiji without any legal status.
- [43] The Tribunal finds that the letter of refusal together with the Affidavit of the Director of Immigration and the information by the Respondents is sufficient reasons for the application for naturalization to be refused.

### **Conclusion**

- [44] 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.

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

[45] I also find that the Appellant did not comply with the requirements of out of time. The appeal ought to be dismissed.

[46] 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.


**RM Thompson Lee - Member of Tribunal**

[47] I have read and concur with the decision.

**Orders**

[48] 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 21 days.*



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Resident Magistrate Mr. Thompson Lee,  
Tribunal Member.



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Hon. Justice Senileba L.T.T Waqainabete-  
Levaci, Chair of the Tribunal.

**Solicitors:**

Vama Law for the Appellant.

Office of the Attorney General for the Respondent.