

IN THE CITIZENSHIP APPEALS TRIBUNAL
AT SUVA

CITIZENSHIP APPEALS TRIBUNAL CASE NO: **HIM 4 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 : **SHULING HAN**
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. A. Chand and Ms. Dass for the Appellant.*
Ms. S. Ali for the Respondent.

Date of Judgment : *19 April 2024*

DECISION

Wati, J; - **Chair of the Tribunal**

Cause and Background

[1] Shuling Han ("***Han***") is a Chinese national. On 0 August 2018, she applied for a Fiji Citizenship by Registration as she had married a Fiji Citizen named Sanjay Rajendra Prasad on 3 August 2018. The marriage was just 17 days before the application for citizenship.

- [2] By a letter dated 21 October 2010, the Immigration Department refused the application under s. 8(7) of the Citizenship Act of Fiji on the basis that her marriage was or is not intended to be genuine and continuing marital relationship. The material part of the letter reads:

“Re APPLICATION FOR CITIZENSHIP BY REGISTRATION

I refer to your application for citizenship by registration dated 20.08.2018 and regret to advise that it has been declined.

Pursuant to Section 8 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 who entered into a marriage with a citizen that was not a genuine and continuing marital relationship.

Please note that the Department has documentary evidence that you have entered into a marriage with your spouse that was not genuine and continuing marital relationship, thus, do not qualify for the grant of certificate of registration under Section 8(7) of the Citizenship Act, 2009.

However, if you are aggrieved by this decision, you may appeal in writing to the Citizenship Appeals Tribunal through the Department within 14 days from the date of this letter”.

- [3] The appellant appeals the decision of the Minister on the grounds that his finding that her marriage was or is not genuine and intended to be continuing is unfounded and flimsy.
- [4] Han first arrived in Fiji on 7 August 2013 to work as a beauty therapist for Sundara Spa under a short term work permit which expired on 29 January 2014. She returned to China on 13 January 2014.
- [5] Han returned to Fiji on 12 November 2014 as a visitor and re-entered on 25 February 2015 with a short term work permit valid until 18 August 2015 to work as a beauty therapist for Happy Foot Reflexology.

- [6] On 5 October 2015, Han applied for an investor permit to operate Big Foot Massage Salon as the Director and Shareholder. The permit expired on 5 October 2018.
- [7] On 3 August 2018, Han married Sanjay Rajendra Prasad. On 20 August 2018 she lodged as application for citizenship under the category of *"an adult who has been married to a Fiji citizen."*
- [8] On 2 October 2018, the Immigration Department carried out an investigation and confirmed that the company was operating 2 shops, one in Nausori and another one in Nakasi.
- [9] The Department says that lodging the application for citizenship within 17 days of marriage was a red flag that the marriage could be a marriage of convenience.
- [10] The Department also considered it a red flag because by 2018, Han had met the requirement to apply for citizenship by naturalization that would have cost her over \$5,000. However, she chose to apply for citizenship by registration which costs approximately \$500.00.
- [11] On 25 September 2018, the Citizenship Officer thus referred Han's application to Compliance and Investigation to ascertain whether the marriage was genuine and whether the company was still in operation.
- [12] The Compliance and Investigation Unit conducted an investigation of the couple's residence in Nakasi on the same day.
- [13] The Unit found personal belongings of Mr. Prasad and Han. However the Department had suspicion that the couple were actually residing in different houses and the belongings were there only to comply with the requirements. There were no other items or wedding pictures that would show evidence of a marriage.

- [14] Given these factors, the Department then sought to ascertain other aspects of Han such as whether both her businesses were still operating and whether the company was in compliance with the Fiji Investment Revenue Certificate conditions, that it had to employ at least 1 local person and up to 4 foreigners.
- [15] On 1 March 2019, the Compliance Officer submitted an Inspection Report to the Department confirming that Han was in the country under an expired Investor Permit. The Investor Permit had expired on 5 October 2018. She was issued her Investor Permit on 29 September 2015 for 1 year and then extended to 2 years on 20 October 2016.
- [16] The Report also stated that 4 foreigners were employed by the company. It highlighted there that were anomalies in the investments in regards the figures provided by Reserve Bank of Fiji and what would be the likely figure of a company that had been in operation for 2 years. The report most importantly stated that the company was engaged in a tattooing business which was not part of its prescribed activity as per the Fiji Investment Revenue Certificate conditions. This was a direct breach of the law.
- [17] The report also stated that an application was made for a Chinese national, Ms. Hongzhi Li, to work for Ruyi Investment Pte Ltd on 8 February 2010 which company is wholly owned by Ms. Xu Chuan. The letter stated that Hongzhi Li was requesting to work at Ruyi Investment Pte Ltd. However, the letter was signed by Han.
- [18] Upon interviewing Xu Chuan, she stated that she did not know Hongzhi Li and she did not make any application for Hongzhi Li. These actions of Han has been in direct breach of Immigration laws.
- [19] The Tax Compliance Certificate and contract letter submitted by Hongzhi Li's application were for Han's company. The Department says that this was an indication that Han intended Hongzhi Li to work for her and not Xu Chuan.

- [20] The report also concluded that Han employed Chinese nationals. This fact was confirmed on February 2019 when 4 Chinese nationals were found at Han's Nakasi salon. They did not have their passports and one person fled the scene upon seeing the Immigration Officers, thus creating further suspicion.
- [21] Later 2 Chinese nationals were brought to the Department. It was noted that they were present in Fiji on visitor permits. The other 2 had left Fiji by then. Employing people who were in Fiji on a visitor's visa was a direct breach of the Immigration laws by Han.
- [22] The investigation also established that Han did not provide work to any local as prescribed by her Fiji Investment Revenue Certificate.
- [23] In view of Han's breach of various law, her application was reviewed again. It was established that Han in all likelihood had married in order to gain Fijian Citizenship and that her marriage is not genuine.
- [24] On 9 April 2019 the Director of Immigration informed Han that her extension for Investor Permit was declined on the grounds namely:
- (i) *Non employment of locals;*
 - (ii) *Employment of Chinese nationals without work permit; and*
 - (iii) *Conducting extra activities not approved by Investment Fiji*
- [25] The appeal against the decision to extend the Investor Permit was declined.
- [26] On 21 October 2010, Han was advised that her application for Citizenship had been declined on the basis that she failed to satisfy the Minister that she entered into a marriage with a Fijian citizen that was or is meant to be genuine and a continuing marital relationship.

Law and Analysis

[28] Han applied for citizenship by registration. Section 8(7), (8), and (9) applies to her.

“[7] An application for citizenship by registration made by an adult who is or has been married to a citizen must be granted if the applicant-

(a) has been lawfully present in Fiji for a total of 3 of the 5 years immediately before the application; and

(b) complies with the conditions prescribed by subsections (8) and (9).

[8] *If, in respect of an application to which subsection (7) applies, the Minister forms the opinion that the applicant is a person who entered into a marriage with a citizen that was not a genuine and continuing marital relationship, the Minister may, by notice in writing, require the applicant to satisfy the Minister that the marriage was or is intended to result in a genuine and continuing marital relationship.*

[9] *If, within a reasonable time after receipt of a notice under subsection (8), the applicant fails to satisfy the Minister that the marriage was or is intended to result in a genuine and continuing marital relationship, the Minister may refuse to grant the application for registration.”*

[29] The Tribunal gave Han a chance to provide relevant information at the hearing to establish the genuineness of her marriage to Sanjay Rajendra Prasad.

[30] Sanjay Rajendra Prasad appeared in court at all times during the hearing. He is supporting his wife’s application for citizenship.

[31] Sanjay Rajendra Prasad wrote a letter to the Court on 12 March 2021. He says that he was in a building construction business since 2004. He was married and got divorced in 2015. He has a child, a daughter, from that marriage.

[32] When he wrote the letter on 12 March 2021, the child was 13 years old.

- [33] He describes how he met Han. He said he met her in 2015 and became friends with her. He became close to her and asked his parents whether he could marry her. His parents approved of the marriage.
- [34] He said on 3 August 2018 they got legally married in Nausori Office. Later in the afternoon, he says that there was a family get together.
- [35] He writes in that letter that on 27 November 2018, he was working in a shop space at Nakasi which his wife Han and he had agreed to purchase. He fell down on the ground. He says that upon hearing this, his father had a heart attack and died.
- [36] Sanjay says that he got admitted to the hospital on 29 November 2018 at Pacific Private Operation in Walu Bay. He said he had his right foot amputated. At that time, he writes, that all his family members were busy at home for his father's funeral and prayers. Since his family members were after his property, he did not allow any family members to visit him in the hospital.
- [37] He only allowed Han to sit beside him for 3 weeks for days and nights.
- [38] At that time, he says that his company had a big project in Navua Vashist Muni College, which he completed with the help of Han and his foreman on 20 April 2020. The school stopped the final payment because of lack of funds in its account.
- [39] On 22 April 2020, at 2am he, said he wanted to visit the washroom. When he wanted to get up, he could not. Half his body had no power. . At that time his wife and family member took him to the hospital. He was told that half of his body had suffered a stroke.
- [40] In the meantime, he says his wife Han's work permit was cancelled and he was disabled. It became really hard for him and his family to buy food and medicine as both of them were not working.

- [41] In January 2021, he says his daughter got missing and he reported the matter to the police. Her mother had taken the daughter who was under his care for 8 years. They had lodged a police report that he was a sick father and could not buy food and other needs for his daughter. On 11 March 2021, the Nasinu Court gave the child's residence to her mother.
- [42] He says that he needs Han to look after him and his mother who is 70 years old.
- [43] On 9 July 2020, he was admitted to Sukuna Ward for one week in Suva Hospital. He claims that all the doctors and patients were shocked to see his wife staying with him in the hospital and sleeping on the bench beside his bed in hospital for weeks.
- [44] In that one week, none of his family visited him. He had only Han beside him. He now stays at home and his left eye and ear are dead. His right foot amputated.
- [45] He says that if Han's citizenship is granted, he can open a small canteen for his wife to manage for their daily food and medical expenses.
- [46] Han also wrote a letter in 2021. The letter is undated but definitely written after 1 January 2021 as it references an incident of 1 January 2021 regarding Sanjay's child leaving him to live with her mother.
- [47] Han wrote that Sanjay has his father, mother and an 8 year old daughter living with him.
- [48] She says she married Sanjay on 3 August 2018. After that his father fell sick and died on 27 November 2018. She said she often accompanied the father to hospital for examination or hospitalization.
- [49] She said that she also sent Sanjay's daughter to school and picked her back from school every day. She says Sanjay also had to work. He suffered from diabetes and intense life made him sick. His right foot ulcerated and became necrotic. He could not work or walk. Whole of his leg turned black.

- [50] The day following his father's death, Sanjay had to undergo amputation. She felt helpless and tried to call his relatives but none of them offered to help.
- [51] She claims to have paid a total of FJD10,000 for Sanjay's operation. She writes that after his operation, he told her that he was not the biological child of his parents and that no relative would pay any money for his operation.
- [52] She says that he cried sadly and told her that he would have died if she had not paid for his operation. She claims that her love deepened for Sanjay.
- [53] She says that she made up her mind that she must look after him well. After two operations and hospitalization, his leg healed.
- [54] Sanjay has no work. He also does not have any insurance. She says she has used up all her savings.
- [55] On 9 July 2020 Sanjay was half paralyzed. She took him to the hospital. She exhausted her strength to carry him on her back. She says that all the people in the hospital were watching them at that time. She says she did not feel shy. She wanted to let all people see that the love between them was true.
- [56] Han says that Sanjay was devastated when his daughter left. He still has his 76 year old mother to look after.
- [57] Han also filed an affidavit on 23 March 2022. In that she provides new information. She states that she was in a de-facto relationship with Sanjay since 2015. She claims that she and Sanjay had established the business with the name and style of Big Foot Massage. She says that both of them had invested in the business.

- [58] As the business grew, she says, they decided to purchase a property in Nakasi. Sanjay then entered into a sale and purchase agreement to purchase a property from one Brij Lata.
- [59] The affidavit also has some pictures with no date and time of when the pictures were taken. No explanation is provided on what the pictures depict and who all are in the pictures.
- [60] The affidavit also has 3 letters. One by R. Ravasua. She says that she has known Han and Sanjay for the past 4 to 5 years since she started having cold treatment at their massage spa at Nakasi.
- [61] She says she has witnessed them working well in running their businesses together for the past years. She says that Han took care of Sanjay when he was sick. She says that their love is genuine which is why they are still together until date.
- [62] She contends that Sanjay has been bed ridden since 2-3 years but Han provided for him and his family even though the business did not prosper due to delays with her Fijian citizenship.
- [63] Ravasua says that Han is a very strong woman. She has witnessed Han work like a man in carpentry, painting, gardening, renovating and even cooking for others to earn an honest living and provide for Sanjay's medical expenses and families livelihood.
- [64] With Sanjay's situation and the impact of pandemic, Han sold her household items to pay for their expenses. Ravasua says that she bought some furniture from her garage sale and even assisted her with advertising to some of her friends in church who also bought some items from her.
- [65] The second letter is from Mr. Bhagwan Patel, the Managing Director of Universal Electronics. He writes that he has known Han and Sanjay since 2015.

- [66] Sanjay had done some maintenance work in his premises in the past and Han has invited him and his wife for lunch and dinner on many occasions.
- [67] The third letter is by Xiaochun Wu from Wan Tong Company. Han engaged Wu as her Immigration Agent. He says that Han has cared for her husband Sanjay. She also supported him. He says she carried Sanjay on her back to reach the medical consultation rooms on second floor of the hospital. Their love and marriage is genuine.

Law and Analysis

- [68] My reading of s.8(7), (8) and (9) of the Act is that a person who is lawfully married to a Fijian citizen can apply by registration for a citizenship if that person has been lawfully present in Fiji for a total of 3 of the 5 years immediately before the application and satisfies the Minister that the marriage was or is intended to result in a genuine and continuing marital relationship and if the Minister is not satisfied of this he may call for, by notice in writing, the applicant to satisfy him accordingly.
- [69] In this case, when the Minister received the application, he carried out his own investigation and was not satisfied that the marriage was or is intended to result in a genuine and continuing marital relationship.
- [70] The appellant Han contends that if the Minister had called for more information, she would have supplied the necessary documents and/or evidence to establish that the marriage was or intended to result in a genuine and continuing marital relationship.
- [71] I do not find that it is mandatory for the Minister to call for information in every case. He may make a decision on the information before him. If he acts on the information before him, he can refuse the application for citizenship, if he is not satisfied that the marriage was or intended to result in a genuine and continuing marital relationship.
- [72] In some cases he may call for more information. If upon receiving more information, he is still not satisfied, he can refuse the application for citizenship.

[73] Even if the Minister ought to have called for more information from Han, that opportunity was granted to her in the appeal to satisfy the Tribunal. With the additional information, the Tribunal will examine whether the appellant is able to establish a genuine marriage.

[74] There is no doubt that the parties are lawfully married. However, the question is whether she can satisfy the other requirements of a genuine marital relationship, which I will examine below under different factors. These factors are normally used to determine whether the marriage was or is intended to be genuine and continuing.

Do they have a household together?

[75] When the Compliance and Investigation Unit visited the couple's residence, they only found the personal belongings of Sanjay and Han. There were no other items to show evidence of a marriage. This gave rise to the suspicion that they were residing in different houses.

[76] Han responds to this allegation specifically. She says that they were not living separately. She elaborated that at the time, Sanjay had her daughter living with him. She had her own daughter who was not comfortable residing with Sanjay. This caused her as the mother to go and reside with her daughter at times.

[77] I find that if Sanjay was living with his mother, daughter and Han at the Nakasi home, the Compliance and Investigation Unit would have definitely noticed a full-fledged home. Everyone's presence would have been felt. A home would have all personal belongings, sleeping items, cooking facilities and storage (s) to indicate that it is being occupied by people.

[78] None of the items were found to establish a home. It was evident to the investigators that personal belongings of the couple were kept to satisfy the requirement of "living together". That crucial evidence has not been rebutted.

- [79] Han agrees that she lives away from Sanjay at times. If she lived with Sanjay at any time, she would have been able to at least show the Tribunal photographs of her home from 2018.
- [80] The photographs would have shown a proper home with facilities showing that they lived there. It would show Sanjay's mother and daughter from 2018 to 2021. There will be continued photos of Sanjay's mother.
- [81] I am surprised that Han has not attached even one photograph of the place she calls "home" to satisfy the Tribunal that she is living with Sanjay on a genuine basis.
- [82] There is no photograph to show that she has ever entertained any visitor at home from Sanjay's side be it family or friends. There are photos of Sanjay with some 2 Chinese woman. They are sitting close to Sanjay. It establishes nothing. The other photograph of Sanjay having lunch/dinner at some restaurant with Han and others also does not establish a genuine household.
- [83] Han says that she looks after Sanjay's family. Why could she not have one photograph with his family especially when she met all of them after the legal marriage as there was a family get together on this day?
- [84] I find it surprising that there is also no photographs with Sanjay's parents since 2015. She also did not attend the funeral of Sanjay's father. If she did, she would have had the photographs. I understand that she was in hospital at the time but Sanjay's father's funeral was also an important event. She ought to have taken part in it.
- [85] Han claims that she used to pick and drop Sanjay's daughter to and from school. There is not a single photo with her.
- [86] Han has also not been able to establish that while Sanjay's daughter lived with her, she participated in any of her school activities. She is not able to show that the daughter has

any contact with her. She even gave the age of the child wrong by saying that the child was 8 years old. Sanjay wrote in 2021 that his daughter was 13 years old.

[87] There is no evidence of the couple buying any household item or groceries together for their home.

[88] From the evidence produced to the Tribunal, the appellant could not satisfy that the couple have a household together.

Financial Aspects

[89] The parties are married since 2018. They have not been able to show to the Tribunal that in the past 5 years they have their finances tied with each other or used for each other's benefits.

[90] Han claims to have spent \$10,000 on Sanjay's medical bills. There is no receipt to show that Han paid any one of Sanjay's medical bills. One receipt showing an amount of \$2,000 being paid does not evidence payment by Han. Another invoice of \$8,588 shows payment status as "*unpaid*". I cannot accept that the parties' finances are used for each other's benefit.

[91] Han says that she and Sanjay established the Big Foot Massage Spa business. There is no evidence to suggest that Sanjay has any part or role to play in the business. None of the financial statements have been provided to show that either Sanjay has spent money in the business or getting any financial benefit from it. The parties have not even shown that Sanjay was paid from the business.

[92] There is also this suggestion that the couple purchased a property in Nakasi for \$400,000. The sale and purchase agreement was made in 2017 before the marriage. There is no evidence to establish that Han has any connection to the sale and purchase of the property in any way. If she paid any money or it was intended to be purchased jointly, there would be evidence of that.

[93] There is no evidence of joint finances or joint liabilities of the couple. They are not able to show any major financial commitment with each other.

Social Aspects and Nature of Commitment

[94] Except for one photograph of Han having lunch with Sanjay and some other people, there is no evidence of the couple spending time together for social events or having any vacation. There is also no evidence of the couple taking part in any other activity together such as shopping, visiting families, entertaining friends, going to hospitals together and so forth.

[95] The letters by other people that their love is genuine is subjective and a reflection of the party's wishes. It is them who should be able to show some form of commitment to each other.

[96] None of the family members of Sanjay and Han are able to give evidence that both of them are genuinely in love and marriage, that they live together on a genuine basis and that they have a committed relationship. In such a case, at least Sanjay's mother would have been a crucial witness.

[97] Given the evidence before the Tribunal, I find that the Minister could not be satisfied that the marriage was or is intended to be genuine and a continuing marital relationship and as such he had to refuse the application for citizenship. I have no basis to interfere with that finding.

[98] I find that the only reason Han married Sanjay was that she had no other option left as her investor permit had expired and she was already in breach of the laws of Fiji. If she applied under any other category, she would have to establish that she is a person of good character and that she has adequate knowledge of English Language and of the responsibilities of a citizen of Fiji.

[99] She knows that it would have been difficult for her to satisfy the Minister that she meets the other requirements. The best option for her was to get married and come under this category of “*application by registration*”.

Result

[100] I find that the Minister was correct in arriving at a finding that the application for citizenship ought to be refused as the applicant Han could not satisfy the Minister that her marriage was intended to result in a genuine and continuing marital relationship.

[101] The appeal is dismissed with costs to the respondent in the sum of \$3,500 to be paid within 21 days.

S. Oica; Member of the Tribunal

[102] I too am of the finding that the applicant Han could not satisfy the Tribunal that her marriage to Sanjay was or is intended to be a genuine and continuing marriage.

[103] Given the shortfalls in the evidence provided by her, I agree with the Wati, J. that the appeal ought to be dismissed with costs.

T. Bainivalu; Member of the Tribunal

[104] I do not find that Han was able to satisfy the Minister of the requirements of the law to qualify for the citizenship.

[105] The Tribunal provided her with an opportunity to present further and better evidence. She has failed to satisfy the Tribunal that her marriage was or is intended to be a genuine and continuing one, thus, entitling her appeal to be dismissed with costs.

Orders

[106] The orders of the Tribunal are:

- (i) *The appeal is dismissed.*
- (ii) *The appellant is to pay to the respondent the 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:

1. Amrit Chand Lawyers for the Appellant.
2. Office of the Attorney General for the Respondent.
3. File: HIM 4/2021.

