

IN THE CITIZENSHIP APPEALS TRIBUNAL
AT SUVA

CITIZENSHIP APPEALS TRIBUNAL CASE NO: HIM 7 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 : **KAMLESH KUMAR** *Appellant*

AND : **MINISTER FOR IMMIGRATION** *Respondent*

Coram : *Anjala Wati, Judge*
S. Qica, as RM then
T. Bainivalu, as RM then

Counsel : *Mr. S. Nandan for the Appellant.*
Ms P. Singh and Ms. S. Pratap for the Respondent.

Date of Judgment : *19 April 2024.*

DECISION

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

Cause and Background

- [1] Kamlesh Kumar ("***Kumar***") is a former citizen of Fiji. He renounced his Fijian citizenship in 2003 for Australian citizenship.
- [2] He applied for his Fijian citizenship on 11 October 2021. His application was refused on 3 December 2021.

[3] The reasons for the refusal were identified in paragraphs 2 and 3 of the letter as follows:

"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.

The Australian Federal Police Clearance provided as part of your application contains adverse records being contrary to section 8(6) of the Citizenship Act 2009..."

[4] It is the respondent's position that the Australian Federal Police Report dated 25 September 2021 relates to Kumar. It shows that during his term of residence in Australia, he committed 51 criminal offences which include shop lifting, common assault, obtaining money by deceit, driving while disqualified from holding a license, providing false name and address to police and so on.

[5] The Minister therefore was of the view that the applicant failed to satisfy him that he is a person of good character and refused his application.

[6] Aggrieved at the decision, the applicant appealed.

Grounds of Appeal

[7] Kumar raises 3 grounds of appeal. He says that the Minister erred as follows:

"[1] In failing to take into account relevant considerations, particularly the following:

(a) the appellant was born in Fiji;

(b) the appellant has an elderly and sickly mother in Fiji who requires him to take care of her as she does not have any other care takers;

(c) the appellant owns property in Sabeto;

(d) the appellant is a trustee of his mother's property;

(e) the appellant is also the administrator of the Estate of Khedu, an Estate based in Fiji; and that

(f) the appellant intends to invest monies and do business in Fiji.

[2] *In failing to give him a fair hearing as the appellant was never made aware of the reasons for which the respondent deemed him to be not a person of good character, in particular, the Australian Federal Police Clearance Report was never made available to the appellant.*

[3] *In finding that the appellant did not satisfy the Minister that he was a person of good character as to the best of his knowledge, he has not committed any major offences in Fiji or Australia and the aforesaid police report could have only contained matters relating to the following incidents:*

(a) A cheque signed by the appellant that was dishonored some 20 years ago causing the police to get involved. This was resolved and the monies paid as the cheque had been presented in error by his then wife;

(b) The appellant has had couple of traffic infringements in the past 10 years.

Law and Analysis

[8] Kumar was a former citizen of this country. The provision of the law that applies to him is s.8(6) of the Citizenship of Fiji Act 2009.

[9] S.8(6) of the Act reads:

“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.”

[10] It was for Kumar to satisfy the Minister that he is a person of good character. This is irrespective of what he pleads that he was born in Fiji, a former citizen, has his elderly and sickly mother in Fiji who requires him to take care of her as she does not have any other care takers, owns a property in Fiji, a trustee of his mother’s property, an administrator of

his father's estate and intends to invest money and do business in Fiji. He must still meet the requirements of being a person of good character. Fiji is not under any obligation to former citizens to give them the citizenship back unless they are person(s) of good character.

- [11] When Kumar made an application by a letter dated 15 September 2021, he stated to the Immigration Department, that he is a law abiding citizen with no criminal records. That is not true.
- [12] The Immigration Department had in its possession the Criminal Records from Australian Federal Police dated 25 September 2021. The record shows that Kumar has criminal conviction starting from 2002 to 2021. I am fully content that this report is a true and proper report reflecting Kumar's criminal history.
- [13] In 2002 he was convicted for driving without a license, giving false name and address to the police whilst driving, obtaining money by deception, passing valueless cheques (several counts for different amounts), and revoking home detention orders imposed by court.
- [14] In 2003 he was convicted for revoking home detention orders.
- [15] In 2007, he was convicted for common assault.
- [16] In 2010, Kumar was thrice convicted for driving without a license.
- [17] In 2011 he was convicted for driving whilst disqualified to do so and for shoplifting.
- [18] In 2012 he was convicted for shoplifting, driving whilst disqualified from holding a license, giving false name and address as a driver and making U-Turn on length of road contrary to road sign.

- [19] In 2013, he was convicted for shoplifting, giving false name and address to police whilst driving, and driving whilst disqualified from holding a driver's licence thrice.
- [20] In 2014 Kumar was convicted for driving while disqualified from holding a license and for shoplifting.
- [21] In 2021, he was convicted of driving without a licence thrice.
- [22] Looking at the appellant's criminal records, it is obvious that he is a person who does not respect the laws and orders of a country. The continued offending shows that he is indifferent about his observing the laws and rules. Some of the convictions indicate his moral culpability. He does not behave in an honest and ethical manner or is able to distinguish the right from wrong.
- [23] For the last 20 years he has not been upholding the rules and values expected of a good citizen. He drives without a license. When he is questioned by police he gives them incorrect details about himself. He is then convicted and disqualified from driving. He breaches that order of the court and drives again. He gets caught by the police again. He lies to them again regarding his personal information. This saga continues until 2021.
- [24] He also is charged for shoplifting on various occasions. The value of shoplifting maybe less than \$2,000 but the ethics of the person is in question. The incident does not happen once. It occurs 4 times and as late as 31 October 2014. It is not even 10 years post conviction for a moral offence like that.
- [25] When he has cheque related offences for passing valueless cheques, he is convicted to home detention. He breaches the home detention order several times.
- [26] His pattern of behaviour shows that he is not able to understand the principles of observing the law and order of a country. He continues to flout the law over and over

again. He does not even care about serving his sentences. He breaches even his sentence orders.

[27] I am surprised that with all that moral turpitude, he expects the Tribunal to come to a finding that the Minister had no basis to arrive at the finding that he is not a person of good character. Kumar is a man of serious moral flaw. . He cannot expect this country to allow him to be a citizen. He has never followed any traffic laws of his country. He has been dishonest when it came to money. How can he be expected to be a good citizen and not a burden to this country? He has not been able to convince the Tribunal that he will not be a liability to this country when he becomes a citizen.

[28] In *Irving v Minister for Immigration, Local Government and Ethnic Affairs (1999) 68 FCR 422 at [431] – [432]*, the full Federal Court of Australia said that:

“...the words good character should be taken to be used in their ordinary sense, namely, a reference to the enduring moral qualities of a person and not to the good standing, fame or repute of that person in the community. The former is an objective assessment apt to be proved as a fact while the latter is a review of subjective public opinion.”

[29] The appellant could not persuade the Minister that he is a person of good character. The Tribunal is also not persuaded that he is a person of good character. He has not changed and continues to flout the law. He does not show any remorse for his conduct. His continued breaking of road rules can be fatal to the people of any country. He can be a menace on the road, cause death and liability to the people and the country. He is a big risk to all road users.

[30] The findings in the case of *Bartlett and Minister for Immigration and Border Protection (Migration) [2017] AATA 1561 (28 September 2017)* is relevant to this case. I express the same sentiments as in paragraphs 42-47 of the judgments:

“[42] There is a clear consistency in the offending in terms of its escalating severity and refusal to submit to lawful authority. The Applicant’s criminal history is suggestive of an overall demeanour oriented towards him getting his own way and trying to

make sure nothing obscures or otherwise gets in the way of what he wants to achieve.

- [43] *There is a further theme to his offending and it relates to his offences involving unlicensed driving and driving with a high range concentration of alcohol in his blood. When he was well past his fortieth birthday, he was sentenced for both of these types of offences. There is, to my mind, nothing to be said in mitigation for serious irresponsibility in the management and control of a motor vehicle. His offences of drink driving and unlicensed driving clearly point to an incapacity to distinguish right from wrong and to otherwise conform to the rules of Australian society insofar as operation of a motor vehicle on a public road is concerned. The catastrophic potential of losing control of a motor vehicle as a result of being affected by alcohol and/or prohibited substances is the subject of constant campaigns by governments at all levels.*
- [44] *I have similar concerns about the Appellant's failure to realise the potential adverse impact arising from unlicensed driving. This applicant (as is the case with virtually all drivers) knew or ought reasonably to have known the potentially serious adverse consequences of unlicensed driving, or driving an unregistered/uninsured vehicle, for other road-users. Whilst no expertise in the motor insurance industry, it is common knowledge that there are insurance implications for unlicensed drivers and/or drivers of unregistered/uninsured vehicles who become involved in motor vehicle accidents. Again, for the Applicant to ignore this obvious and serious consequence of his driving conduct demonstrates an incapacity to distinguish right from wrong and to otherwise conform to the insurance/registration regime of the Australian community as it relates to the ownership and operation of a motor vehicle.*
- [45] *The Applicant's driving offences may, at first blush, be considered relatively minor when viewed against the balance of his history. However, the theme of attendant recklessness and indifference to laws and rules governing the operation of a motor vehicle is, in and of itself significant. Indeed laws that protect road users "go to the essential safety of the community." Other parts of his criminal history are perhaps more serious than his driving/traffic convictions. But, his failure to understand right from wrong when operating a motor vehicle – be it drinking and driving, driving without a license, or driving an unregistered vehicle – can only lead me to conclude that this component of his history further confirms the seriousness of his offending and potential risk to the community.*

[46] *Having regard to the nature of this past conduct, were he to reoffend in a similar manner, I am of the view that he would pose a grave risk to individuals in the Australian community. His offending against the personal rights of others, the property rights of others, and wanton disregard for court orders or any lawful authority could result in members of the Australian community suffering anything from financial loss, serious physical and/or psychological injuries to, conceivably, death.*

[47] *The conduct giving rise to the siege situation is, to my mind, especially significant. We live in a world now dominated by constant threats of social disruption, be it in the form of terrorist derived violence or via electronic hacking. It should be appreciated that the last thing our lawful authorities want is to be compelled to unnecessarily deploy resources to deal with conduct of the type exhibited by this Applicant that resulted in the siege situation."*

Result

[31] For the reasons above, the appeal is dismissed. The appellant is to pay costs of \$3,500 to the respondent within 21 days.

Oica, J: Member of the Tribunal

[32] Having looked at the criminal history of the appellant Kumar, I am of the view that he was not able to persuade the Minister that he is a person of good character. He did not and does not qualify to be granted a citizenship under s.8(6) of the law.

[33] I agree with the findings of of Wati, J that the appeal should be dismissed with costs.

T. Bainivalu; Member of the Tribunal

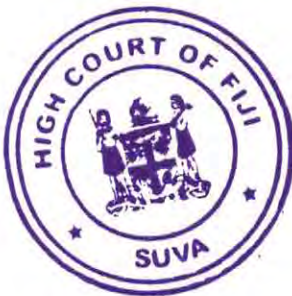
[34] Mr. Kumar has continued to show that he is a person who will not obey the law and rules of Australia. His records from Australia Police was sufficient for the Minister to find that the applicant was not able to satisfy him that he is a person of good character. He was rightfully refused his application for citizenship.

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

Orders

[36] The orders of the Tribunal are:

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

Reddy & Nandan Lawyers for the Appellant.
Office of the Attorney General for the Respondent.
File: HIM 7 of 2021.

