

Boarder Management System (IBMS). The letter dated 11.06.2024 is taken on record.

4. Learned counsel for petitioner has referred section 4 of the Pakistan Citizenship Act 1951 which is that :-

“Every person born in Pakistan after the commencement of this Act shall be a citizen of Pakistan by birth:

Provided that a person shall not be such a citizen by virtue of this section if at the time of his birth-

- (a) his father possesses such immunity from suit and legal process as is accorded to an envoy of an external sovereign power accredited in Pakistan and is not a citizen of Pakistan
- (b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

He has contended that even by birth which is not challenged, she is entitled for citizenship and passport. Hence Directorate of Immigration and Passport shall be competent to Afghan passport of petitioner No.2 if issued.

5. Admittedly, this petition was disposed of vide order dated 29.05.2023 wherein the Respondents were directed to process the application of the petitioner in accordance with law and decided the same through a speaking order within a period of 30 days from the date of receipt of this order. However, after passing this order, the petitioner approached the Respondents but they flatly refused to process the case of the petitioner for citizenship. Subsequently, contempt application (CMA No.2026/2024) was filed by the petitioner, on which notice was issued. Today, Deputy Director (Passports), Directorate of Immigration & Passports submits that due to non-provision of Afghani passport and Pakistani visa, the Directorate of Immigration and Passport cannot process the application of Petitioner No.2 regarding issuance of Pakistani citizenship; as such, the application filed by the petitioner is pending. The main controversy in this petition is only that the Petitioner No.2 Mst. Nazia failed to produce the Afghani passport and Pakistani visa to see whether the stay of the petitioner No.2 is more than five years.

The official respondents also filed a letter which disclosed that the case of the petitioner is dealt under Section 10(2) of Pakistan Citizenship Act, 1951 read with Rule 15 of Pakistan Citizenship Rules, 1952 which provides five years aggregate stay of the applicant/petitioner in Pakistan. Such stay can only be calculated from foreign passport containing Entry/Exit details from Integrated Boarder Management System. In the instant case, the petitioner No.2 is residing since her birth and such birth has not been challenged. Further, the Petitioner No.2 also produced Marriage Registration Certificate issued by the Government of Sindh, Pakistan which is available at Page-9 which shows that marriage was solemnized between Petitioner No.1 and Petitioner No.2 on 11th April, 2015 which clarified that the Petitioner No.2 is residing for last nine years in Pakistan and her address is shown as Near Muhammadi Masjid, House No.208, Street No.28/A, Mohalla Gulshan Sikandarabad, Keemari, Karachi. From the documentary evidence, it appears that the requirement of Section 10(2) of Pakistan Citizenship Act, 1951 read with Rule 15 of Pakistani Citizenship Rules 1952 has been fulfilled. Further, Government of Pakistan has also framed rules under Section 44 of NADRA Ordinance which are called as National Database and Registration Authority (Pakistan Region Card) Rules, 2002 [hereinafter referred as POC Rules]. For the purpose of instant case, whether POC are being claimed by foreign nationals on the basis of marriage with Pakistani citizens, the eligibility provided in Rule 4 is relevant. For the sake of reference, Parts of sub rule 1 & rule 5 of Rule 4 of POC Rules are reproduced hereunder for ready reference:

4. Eligible foreigner of Pakistan origin. – (1)

A person shall be an eligible foreigner of Pakistan origin if–

- (a) he is a foreigner; and*
- (b) he had been a citizen of Pakistan at any time during his life.*

Provided that he:

- (i).....*
- (ii).....*
- (ii).....*
- (iv).....*

(v).....

(vi).....

(vii).....

(2).....

(3).....

4. Eligible foreigner of Pakistan origin. – (5)

A foreigner who is married to a citizen of Pakistan shall, till the time he or she remains married to such citizen, also be an eligible foreigner of Pakistan origin:

Provided that in case the citizen of Pakistan to whom such foreigner is married dies during the subsistence of their marriage, such foreigner shall continue to be an eligible foreigner of Pakistan origin till the time he or she contracts a second marriage:

Provided further that such foreinger married to a citizen of pakistan is-

- (i) not a citizen or national of India;*
- (ii) not a citizen or national of a state or country not recognized by pakistan; and*
- (iii) not a citizen of any enemy country;*

Provided also that the Federal Government may, in special extraordinary circumstances and upon an application made in this behalf by the concerned person, allow a foreigner married to a citizen of Pakistan not otherwise eligible under the second proviso, to be registered for an issued a card as an eligible foreigner of Pakistan origin and such person shall, upon issuance of the card and till the expiry or early termination of validity thereof for a reason other than such person's ineligibility cured under this proviso, be treated as an eligible foreigner of Pakistan origin for all purpose under these rules.

6. For the purpose of claiming POC Cards on the ground of entering into marriage of a Pakistani to a foreigner, the following essential conditions may be deducted from Rule 4 of the POC Rules;

- a. The applicant should be a foreigner;
- a. He/she should have validly married to a Pakistani citizen and the marriage should be intact at the time of applying as well as issuance of POC Card;

7. The proviso has however provided that Federal Government would have the power to relax the condition of eligibility and allow POC to such a foreigner who is not otherwise eligible under

the Rules. An eligible family member of an eligible foreigner of Pakistan origin, any of the spouse, real parents or grandparents; real children or grandchildren of the eligible foreigner of Pakistan origin may also apply for grant of POC under Rule 5 of POC Rules.

8. From the above, it is very much clear that the petitioner is residing from her birth so also she has contracted marriage with Petitioner No.1 Mir Hassan having NADRA Registration Card as Afghani Registered and out of such wedlock, there are three issues which proved that the Petitioner No.2 is residing in Pakistan for more than five years; as such, she is entitled for Pakistani citizenship.

9. On identical footings, Peshawar High Court has decided the issue, hence on the plea as raised by present officers of the Directorate of Immigration and Passports, Ms. Nazia (Petitioner No.2) shall not be deprived of her right of Pakistani citizenship as already directed by this Court; in case of failure we would frame the charge on the next date of hearing.

To come up on **24.09.2024.**

J U D G E

J U D G E