

FILED

Aug 21 2014

ASST. CLERK OF COURTS
REPUBLIC OF MARSHALL ISLANDS

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

IN RE PETITION FOR CITIZENSHIP BY) CIVIL ACTION No. 2014-105
REGISTRATION)

BY WU JIANYA)

DECREE OF ELIGIBILITY TO
REGISTER AS A CITIZEN

TO: WITTEN T. PHILIPPO, counsel for petitioner
ASSISTANT ATTORNEY-GENERAL ROSALIE KONOOU, counsel for the Republic

I. INTRODUCTION

Wu Jianya (“Wu”) petitioned the Court for a decree of eligibility to register as a citizen of the Marshall Islands under Article XI, Section 2(1)(b) of the Constitution. In support of his petition, Wu alleged as follows:

- (i) that he has been resident in the Republic for more than three years,
- (ii) that he is the parent of a child who is a citizen,
- (iii) that he is not disqualified on national security grounds, and
- (iv) that he is prepared to renounce his citizenship in the People’s Republic of China and to swear allegiance to the Republic of the Marshall Islands.

The Republic opposes Wu’s petition, citing two reasons: first, Wu must have resided in the Marshall Islands for at least three years under a “residence visa,” but he has not; and second, “Any person not complying with any laws of the RMI is not (sic) fit and proper person and is a

risk of danger to national security (Citizenship Act 1984, s. 410).” The Republic does not otherwise question Wu’s qualifications to register as a citizen under Article XI, Section 2(1)(b) of the Constitution.

Accordingly, the only contested issues before the Court are (1) whether Wu must have resided in the Marshall Islands for at least three years under a residence visa to qualify for citizenship by registration under Article XI, Section 2(1)(b) of the Constitution and (2) whether is Wu a person not complying with the laws of the RMI and so is not a fit and proper person and is a risk of danger to national security.

II. FACTUAL FINDINGS

On August 7, 2014, Wu appeared in person and by counsel Witten T. Philippo for a hearing on Wu’s Petition for Citizenship by Registration. Also present in the Courtroom for the hearing, and identified by Wu, were Wu’s spouse Mini Bokadrik, also known as Mini Andrike, Wu’s mother-in-law, Amenda Bokadrik, and Wu’s daughter with Mini Bokadrik, Alinda Wu. The Republic was represented by Assistant Attorney General Rosalie Konou.

At the hearing, the Court heard argument by counsel, testimony by Wu, and received documentary evidence, including the following:

- a photocopy of the picture page of Wu’s People’s Republic of China passport, No. G19590951, Petitioner’s Exhibit 1;
- copies of Wu’s current alien registration certification and entry visa, Petitioner’s Exhibit 2;
- a photocopy of the picture page of Wu’s spouse Mini Bokadrik’s Republic of the Marshall Islands passport No. C84408, Petitioner’s Exhibit 3;

- a certified copy of Wu's spouse Mini Bokadrik' Republic of the Marshall Islands Certificate of Live Birth, No. Ailinglaplap 1985-764, Petitioner's Exhibit 3a;
- a certified copy of Wu's daughter Alinda Wu's Republic of the Marshall Islands Certificate of Live Birth, No. Majuro 2008-534, Petitioner's Exhibit 4;
- a photocopy of the picture page of Wu's daughter Alinda Wu's Republic of the Marshall Islands passport No. C84407, Petitioner's Exhibit 5;
- Wu's Republic of the Marshall Islands Police Department Police Clearance dated May 21, 2014, Petitioner's Exhibit 6;
- Wu's Majuro Atoll Local Government Police Clearance dated May 21, 2014, Petitioner's Exhibit 7;
- Wu's Republic of the Marshall Islands Ministry of Health Medical Clearance Form dated May 21, 2014, Petitioner's Exhibit 8; and
- a copy of a March 3, 2014 letter from the Chief of Labor Division, Ministry of Foreign Affairs, authorizing Wu to work for Alinda Store under an Extension Work Permit, Petitioner's Exhibit 9.

Based upon the Court's entire file, evidence before the Court, and submissions by counsel, the Court finds as follows:

1. Wu Jianya is 29 years old (dob October 8, 1984), a resident of the Republic of the Marshall Islands, and a citizen of the People's Republic of China.
2. Wu arrived in the Republic of the Marshall Islands in 2003 and has been a legal resident of the Republic of the Marshall Islands for more than three years prior to today's date.
3. Wu is married to Mini Bokadrik, also known as Mini Andrike, a citizen of the

Marshall Islands.

4. Wu and his wife are parents of a daughter who is a citizen of the Republic of the Marshall Islands: Alinda Wu, born October 24, 2008.

5. Wu has received a health clearance from the Marshall Islands Ministry of Health.

6. Wu has not been convicted of a crime and has received a police clearance from the Marshall Islands Department Police Department and the Majuro Atoll Local Government Police Department.

7. Wu has a current entry visa and alien registration certification showing that he is lawfully in the Marshall Islands.

8. Wu has a March 2014 letter from the Chief of Labor Division, Ministry of Foreign Affairs, authorizing him to work for Alinda Store as the manager.

9. Wu is employed by Alinda Store as the manager, earning a monthly income of approximately \$1,500, which is sufficient to provide for his family's needs.

10. Pursuant to Section 410(2) of the Citizenship Act 1984, 43 MIRC 410(2), the Court, in a May 29, 2014 Order, set a date of 60 days from the date of service for either the Cabinet or the Minister of Justice to submit to the Court a certification stating whether Wu is a fit and proper person to be registered as a citizen in the interest of national security. Under Section 410(2) the Cabinet's or Minister's national security determination is said to be conclusive. However, neither the Cabinet nor the Minister timely issued a certification. Accordingly, the Republic waived any objection to the petition on national security grounds.

The Court shall now address the contested issues.

III. WHETHER WU MUST HAVE A RESIDENCE VISA TO QUALIFY FOR CITIZENSHIP BY REGISTRATION AND IS WU A PERSON WHO HAS VIOLATED THE LAWS OF THE REPUBLIC

Just minutes prior to the hearing on this matter, counsel for the Republic filed a document entitled “Certificate for/against Citizenship by the Minister of Justice.” However, counsel for the Republic did not move to admit this document into evidence, nor did she ask the Court to take judicial notice of the document. Accordingly, the Republic’s document, “Certificate for/against Citizenship by the Minister of Justice,” was not admitted into evidence.

Even if the Republic’s certification had been admitted into evidence, the certification is not a Section 410(2) certification as to risk or threat to national security. It does not satisfy the constitutional or statutory requirements of a national security certification. *See* Const., Art. XI, Sec. 2(3), and Section 410(2) of the Citizenship Act, 43 MIRC 410(2).

Instead, the Republic’s certificate asserts that Wu does not meet the criterium for citizenship by registration for two reasons: (i) Wu does not meet the three-year constitutional residency requirement because he was not resident for three years under a “residence visa”; and (ii) “Any person not complying with any laws of the RMI is not a fit and proper person and is a risk to national security (Citizenship Act 1984, s. 410).” Neither assertion bars Wu’s from being eligible for citizenship by registration.

A. A residence visa is not required to qualify for citizenship by registration.

The Government’s claim that the three-year residency requirement can only be met by residence under a “residence visa” fails for several reasons.

First, neither Article XI, Section 2(1)(b) of the Constitution¹ nor Section 410(3) of the Citizenship Act² requires that Wu obtain a residence visa, as the Government argues. The Constitution only requires “that he has been resident in the Republic for not less than 3 years, and is the parent of a child who is a citizen of the Republic.” To accept the Government’s argument, the Court must read into Article XI, Section 2(1)(b) of the Constitution and Section 410(3) of the Citizenship language, a resident visa restriction, that is not there. This is something the Court

¹Article XI, Section 2, of the Constitution reads as follows:

Section 2. Persons Who May Be Registered as Citizens.

(1) Unless disqualified pursuant to paragraph (3) of this Section, any person who is not a citizen of the Republic of the Marshall Islands shall become a citizen by registration if, upon application, the High Court is satisfied either:

- (a) that he has land rights; or
- (b) that he has been resident in the Republic for not less than 3 years, and is the parent of a child who is a citizen of the Republic; or
- (c) that he is of Marshallese descent, and that in the interests of justice his application should be granted.

(2) A person who has attained the age of 18 years shall not be registered pursuant to this Section as a citizen of the Republic, until he has taken an oath or made an affirmation of allegiance to the Republic.

(3) In the interests of national security or policy with respect to dual citizenship, the Nitijela may by Act provide for the disqualification of any class of persons who would otherwise be entitled be registered as citizens pursuant to this Section, but who have not already been so registered.

²Paragraph (3) of Section 410 of the Citizenship Act reads as follows:

(3) For the purposes of determining the period of residence of any person in the Republic for citizenship by registration under Article XI, Section 2 of the Constitution of the Marshall Islands, any period during which the person was not legally in the Republic as an immigrant shall be disregarded.

will not do.³ There is not visa requirement.

Second, Section 410(3) states that for purposes of determining the period of residency under Article XI, Section 2 of the Constitution, any period during which the person was not legally in the Republic as an immigrant shall be disregarded. One can argue that this section requires that applicants have resided in the Marshall Islands for three years under the status of an immigrant. However, even if this restriction is constitutional (and it may not be⁴), the Immigration Act does not provide for the status of “immigrant” as distinguished from the status of any other non-citizen lawfully resident under a visa or visa exemption. Instead, the “Government immigration policy” under the Immigration Act includes policy in relation to a visa or permit. *See* Section 102(1)(s) of the Immigration Act, 43 MIRC 102(1)(s). Accordingly, the Court will continue to look to see if the petitioner was lawfully in the Republic under any visa or visa exemption under the Immigration Act. The residence visa is not the sole option.

Furthermore, the Government cannot argue that Section 410(3) of the Citizenship Act should be read to refer to the residence visa under Section 132 of the Immigration Act. Section 410(3) of the Citizenship Act was enacted in 1984, twenty years before Section 132 was enacted in the 2006 Immigration Act. Logically, one cannot infer Section 410(3) was intended to include the Section 132 residence visa, which did not come into existence for another 20 years.

³In the absence of some textual or logical support, the Supreme Court has declined to read into the Constitution a provision not contained in it. *See In the Matter of the 19th Nitijela Const. Reg. Ses.*, 2 MILR 134, 140 (1999)

⁴Note, Article XI, Section 2, of the Constitution expressly gives the Nitijela authority to provide by Act for the disqualification petitioners for citizenship by registration (i) in the interest of national security or (ii) with respect to dual citizenship. However, the Constitution does not expressly give the Nitijela authority to disqualify lawful residents because they do not hold a particular kind of visa.

Third, the Section 132 “residence visa” is a poorly defined and administered visa not reasonably available to Wu and petitioners like him. Under Section 132 of the Immigration Act, the residence visa is available for only one of three categories of applicants:

- a. a person who holds a Certificate of Actual Residence;
- b. a person who is a naturalized or registered citizen but does not have a passport; or
- c. a person who is an honorary citizen but does not have a passport. 43MIRC 132.⁵

For two reasons, these categories are not available or appropriate for Wu.

If, as the second two categories provide, Wu were already a citizen by naturalization or registration or were an honorary citizen, then he would not be before the Court now seeking citizenship. These two categories are clearly inapplicable.

For a much different reason the first category is inapplicable as well. There are no statutory or regulatory provisions for proscribing what a “Certificate of Actual Residence” is or how a person can obtain one, so as to be eligible for a residence visa. According to the Deputy Director of Immigration, the Department of Immigration does not know what is meant by “Certificate of Actual Residence.” If the Department of Immigration does not know what a “Certificate of Actual Residence,” then how can one fault Wu for not getting one?

⁵§132. Residence visas.

(1) Every person who:

(a) is the holder of a Certificate of Actual Residence that was issued prior to or following commencement of this Chapter ;
or

(b) is a naturalized or registered citizen of the Republic but does not hold an RMI passport; or

(c) is an honorary citizen of the Republic but does not hold an RMI passport, may apply in the prescribed manner for a residence visa.

Further, the Deputy Director of Immigration testified that the “residence visa” is available at the discretion of the Director of Immigration. It is not something the Department advertises or tells visa applicants about. The Deputy Director was only aware of the Department of Immigration having issued two “residence visas,” and they were issued at the discretion of the Director of Immigration to a brother and sister in 2010 or 2011. The Immigration Regulations of 2009, which were provided to the Court by the Government, do not even recognize or make provision for issuance of a residence visa or a Certificate of Actual Residence. Under these circumstances, one cannot reasonably expect Wu, or any other petitioner, to request a residence visa.

In sum, there are no established procedures or circumstances under which Wu, or any other non-citizens seeking to register as a citizen, could or would apply for a Section 132 residence visa. There is no constitutional or statutory requirement that Wu obtain a residence visa in order to be lawfully resident for purposes of citizenship by registration.⁶

Fourth, the Government’s residence visa requirement must fail as there is a large category of lawful residents who are exempt from visa requirements, whether the residence visa or others. Citizens of the United States and of the other Freely Associated States are not required to obtain visas. *See* Section 114 of the Immigration Act. The Government’s recent argument that the petitioner’s three-years residence must be residence under a residence visa would prohibit

⁶Looking back at the predecessor to the Immigration Act 2006, the Immigration and Emigration Act 1986, there is no express provision for a “residence visa” nor is a visa required to qualify to register as a citizen. The Immigration and Emigration Act 1986 Regulations do provide for a “residence visa.” However, the 1986 “residence visa” has none of the requirements set forth in the Section 132 of the Immigration Act 2006, and does not require petitioners obtain a residence visa, or any visa, to qualify to register as a citizen.

citizens of the United States and the FAS (with their visa exemptions) from registering as citizens of the Republic.

This is not the position the Government has taken in the past. A United States citizen was able to obtain a decree of eligibility to register without producing a residence visa. *See* High Court CA 2007-055 (where a United States citizen sought, and with the Government's support, was granted a decree of eligibility to register as a citizen without producing a residence visa, notwithstanding Section 132 of the Immigration Act). No constitutional or statutory authority, of which the undersigned is aware, permits the Government to exclude United States and FAS citizens from registering as Marshallese citizens — unless they first reside three years under a residence visa, as opposed to simply residing lawfully in the Marshall Islands for three years.

Fifth, notwithstanding counsel's arguments, the Minister's certification is not controlling on the question of whether Wu has been resident in the Republic for at least three years. It is the task of the Court, not the Cabinet or the Minister of Justice to determine if a petitioner has met the three-year residency requirement set forth in Article XI, Section 2(1)(b) of the Constitution. Under Section 410(2) of the Citizenship Act, the Court is to defer to the certification of the Cabinet or the Minister of Justice regarding national security. However, no constitutional or statutory provision requires that the Court defer to the Minister of Justice regarding the determination of residency.

B. Wu is not a person who has violated the laws of the Republic.

The second part of the Government certification states that “Any person not complying with any laws of the RMI is not a fit and proper person and is a risk of danger to national security (Citizenship Act 1984, s 410).” This language implies that Wu has not complied with the laws of

the Republic and so is a risk to national security. This argument too must fail.

Under the Constitution, a person is presumed innocent until proven guilty. See Const., Art. II, Sec. 4(2). Nowhere has the Republic established, or even asserted, that Wu has been convicted of violating the laws of the Republic. This Court will not infer Wu is guilty of some unknown crime until he has been properly convicted. This Court will not infer without good cause that Wu is a risk to national security.

IV. CONCLUSION

Based upon the above, the Court concludes as follow:

1. The Court has jurisdiction over this matter and Wu.
2. All material allegations of the petition have been proven.
3. For eligibility to register as a citizen, Wu has met the three-year residency requirement set forth in Article XI, Section 2(1)(b) of the Constitution, and in Section 410(3) of the Citizenship Act, 34 MIRC 410(3). He has lawfully been a resident of the Republic for more than three years.
4. Wu is the father of a child that is a citizen of the Marshall Islands.
5. Wu is law-abiding, presents no risk or threat to the public health, safety, or welfare, and can support his wife and their Marshallese child. For purposes of Section 410(1) of the Citizenship Act, 43 MIRC 410(1), Wu does not constitute a threat or danger or risk of danger to national security. Wu is not disqualified for citizenship by registration on national security grounds.
6. As a condition of becoming a citizen of the Republic of the Marshall Islands by registration, Wu is willing to renounce his citizenship in the Republic of Korea and to make an

affirmation or to take an oath of allegiance to the Republic of the Marshall Islands. *See* Section 411 of the Citizenship Act, 43 MIRC 411.

7. Accordingly, Wu is qualified to be registered under Article XI, Section 2(1)(b) of the Constitution in that he has been lawfully resident in the Republic of the Marshall Islands for at least three years, that he is the parent of a child who is a citizen of the Republic of the Marshall Islands, that he has not been disqualified from being registered as a citizen in the interest of national security, and that he is prepared to renounce his citizenship in the Republic of Korea and swear allegiance to the Republic of the Marshall Islands.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Wu is qualified to appear before the Office of the Attorney General and register as a citizen of the Republic of the Marshall Islands, after renouncing his citizenship in the People’s Republic of China and taking the oath of allegiance to the Republic of the Marshall Islands pursuant to the office’s procedures.

Date: August 21, 2014.

A handwritten signature in black ink, appearing to read 'C. Ingram', written over a horizontal line.

Carl B. Ingram
Chief Justice, High Court