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REPUBLIC OF MARSHALL ISLANDS

IN THE HIGH COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

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| In re the Citizenship of VICENTE GALBERIO CAYETANO, | ) | CIVIL ACTION No. 2011-193                             |
|   | ) |   |
| by  | ) |   |
|   | ) |   |
| VICENTE GALBERIO CAYETANO,                          | ) | <b>DECREE RE ELIGIBILITY TO REGISTER AS A CITIZEN</b> |
|   | ) |   |
| Petitioner.   | ) |   |
| _____   | ) |   |

On February 20, 2013, Vicente Galberio Cayetano (“petitioner”) appeared in person and by counsel Witten T. Philippo. Also present in the Courtroom and identified by the petitioner were the petitioner’s two children, Jenelyn Cayetano and Joselyn Cayetano, and the mother of the children, Hemruth Lani. The Republic was represented by Assistant Attorney General Rosalie A. Konou.

In reaching its findings and conclusions in this matter, the Court has considered the following: the Court’s entire file in this matter; submissions by counsel; testimony by the petitioner, by Hemruth Lani, and by the Director of Immigration Paul Tonyokwe; documentary evidence, including a photocopy of the picture page of the petitioner’s Republic of the Philippine’s passport, no. WW0513100, Exhibit A, a certified copy of petitioner’s daughter Jenelyn Cayetano’s Certificate of Live Birth, Majuro 2008-\_\_\_\_\_, Exhibit B, a certified copy of petitioner’s daughter Joselyn Cayetano’s Certificate of Live Birth, Majuro 2010-411, Exhibit C, petitioner’s January 15, 2013 Ministry of Health Medical Clearance, Exhibit D, petitioner’s February 20, 2013 Police Clearance from the Marshall Islands Department of Public Safety, Exhibit E (filed February 25, 2013), petitioner’s February 20, 2013, Police Clearance from the

Majuro Atoll Local Government Department of Public Safety, Exhibit F, and the February 13, 2013 Immigration Division Status Verification Record, Respondent's Exhibit 1 (C.A. 201-193); and the absence of a certificate of fitness for citizenship filed with the Court either by the Cabinet or the Minister of Justice.

Based upon the above, the Court finds as follows:

1. The Court has jurisdiction over this matter and the petitioner.
2. All material allegations of the petition have been proven.
3. The petitioner is 53 years old (dob August 20, 1959), a resident of the Republic of the Marshall Islands, and a citizen of the Republic of the Philippines.
4. The petitioner first arrived in the Republic of the Marshall Islands either in the 1999, according to petitioner's testimony, or in 2005, according to the Immigration Division records. In either event, the petitioner has been a legal resident of the Republic of the Marshall Islands for more than three years prior to today's date. This is confirmed by the Republic's Exhibit 1 (C.A. 201-193), which states "He [the petitioner] has been legally registered since he entered the RMI."
5. The petitioner is the father of two female children, Jenelyn Cayetano, dob July 14, 2008, and Joselyn Cayetano, dob May 1, 2010. This was established by the children's certificates of live birth, by petitioner's testimony, and by the testimony of the children's mother, Hemruth Lani. As Ms. Lani testified, she is a citizen of the Marshall Islands, has land rights in Jaluit Atoll, Marshall Islands, and her two daughters with the petitioner also are citizens of the Marshall Islands.
6. The petitioner has received a health clearance from the Marshall Islands Ministry of Health.
7. The petitioner has not been convicted of a crime and has received a police clearance from the Marshall Islands Department of Public Safety and from the Majuro Atoll

Local Government Department of Public Safety.

8. The petitioner is gainfully employed by ANIL Construction Company as a carpenter earning approximately \$560 per month. He has sufficient resources to support himself, Ms. Lani, and their two daughters. Ms. Lani confirmed that the petitioner does in fact support her and their two daughters.

9. Neither the Cabinet nor the Minister of Justice has, within the time set by the Court, submitted to the Court a certification of whether the petitioner is a fit and proper person to be registered as a citizen in the interest of national security. No certification was filed by February 5, 2013, as the Court had ordered, or within 10 days thereafter as the Republic's counsel had requested. However, based on the above findings that the petitioner is law-abiding, presents no risk or threat to public health, safety, or welfare, is gainfully employed, and supports Ms. Lani and their Marshallese children, the Court concludes that the petitioner does not constitute a threat or danger or risk of danger to national security.

10. In opposition to the petition, the Republic's counsel has, at various times, argued the following: that the petitioner is in violation of the Republic's immigration laws and regulations; that the petitioner has not met the "interests of justice" requirements set forth in High Court CA 2009-239; that the petitioner is not married to the mother of his Marshallese children; that the Court should not decide this case until the Nitijela changes the law; and most recently that the petitioner has not met the residency requirement under Section 403(7)(b) of the Citizenship Act 1984, 43 MIRC Sec. 403(7)(b). Counsel's arguments are of no avail.

a. Counsel for the Republic argues that the petitioner is in violation of immigration laws and regulations because he was required to leave the Republic in 2011 and return before transferring employment from IBC to ANIL, but he did not. This allegation, however, was not established. On this question, the Republic's witness, Director of Immigration Paul Tonyokwe, was ambiguous. Although the Republic's

Exhibit 1 states that the petitioner was transferred from IBC to ANIL in 2011, Director Tonyokwe testified that the Division of Labor sometimes permits such transfers without the worker leaving the Republic. And although just prior to introducing Republic's Exhibit 1 into evidence on February 20, 2013, counsel for the Republic had Director Tonyokwe amend the exhibit to state that the Immigration's "File/s reflect records of violation of Immigration Law and & Regulation [sic]," the Republic produced no evidence from Immigration Division's files to that effect. That is, the Republic presented no evidence that the petitioner's entry permit or visa had expired. *See* Section 169 of the Immigration Act 2006 ("Immigration Act"), 43 MIRC Sec. 169. As far as the Court can determine the Division of Immigration has yet to make a determination that the petitioner is in violation of "Immigration Law & Regulation." However, even if the Division of Immigration eventually orders the petitioner to leave and return under a new contract, for purposes of registering as a citizen the petitioner has lawfully resided in the Republic for more than three years and is not a danger or risk of danger to national security, as was noted above.

b. The petitioner is not required to meet the "interests of justice" requirements set forth in High Court CA 2009-239 (e.g., balancing the interests of current citizens, and compelling reasons), because the "interests of justice" requirements only apply to citizenship by registration based upon Marshallese decent under Article XI, Section 2(1)(c) of the Constitution. This petition is not based upon Section 2(1)(c) and Marshallese decent. Instead, this petition is based upon Section 2(1)(b) and having a child that is a citizen of the Marshall Islands. Section 2(1)(b) does not impose an "interest of justice" requirement.

c. The petitioner need not be married to the mother of his Marshallese children to be registered as a citizen of the Republic under Article XI, Section 2(1)(b) of

the Constitution.

d. The Court must rule on the petition based upon the law as it currently is written, not as how counsel for the Republic wants it to be amended.

e. The petitioner is not required to meet the residency requirement set forth under Section 403(7)(b) of the Citizenship Act 1984 (“Citizenship Act”), 43 MIRC 403(7)(b), a 10-year residency requirement that excludes periods for which the applicant was granted entry under the Labor (Non-Resident Workers) Act, 2006 (“Labor Act”), because Section 403 applies to citizenship by naturalization, not citizenship by registration, as in the present case. Residency for citizenship by registration is, instead, covered by Section 410(3) of the Citizenship Act, which provides as follows: “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.” Unlike in Section 403(7)(b), Section 410(3) does not, for purposes of meeting the residency requirement for citizenship, exclude the period the person was a granted entry under the Labor Act. The Court will not read into Section 410(3) a limitation that is not there. Moreover, under the Immigration Act, there is no provision for an “immigrant visa” separate from other visas that one can secure. The Immigration Act does not provide for the status of “immigrant” as distinguished from the status of any other non-citizen resident under a visa or visa exemption. Instead, the “Government immigration policy” includes policy in relation to any visas and permits. See Section 102(1)(s) of the Immigration Act, 43 MIRC 102(1)(s). Accordingly, until the Republic provides for an “immigrant visa” separate from other visas, the Court will continue to look to see if the petitioner was lawfully in the Republic under a visa or visa exemption. This may be one of the provisions of the immigration law the counsel wants


to change, but as noted above, the Court must follow the law as it currently stands.

11. As a condition of becoming a citizen of the Republic of the Marshall Islands by registration, the petitioner is willing to renounce his citizenship in the Republic of the Philippines and to make an affirmation or to take an oath of allegiance to the Republic of the Marshall Islands.

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

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the petitioner 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 Republic of the Philippines and taking an oath of allegiance to the Republic of the Marshall Islands, pursuant to said office's procedures.

Dated: March 4, 2013.

  
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Carl B. Ingram  
Chief Justice, High Court