

FILED

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IN THE SUPREME COURT
FOR THE
REPUBLIC OF THE MARSHALL ISLANDS

ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

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| In Re: the Citizenship of Laureano Lopez Sampang |) | Supreme Court Case No. 2014-002 |
| |) | |
| Petitioner/Appellee, |) | OPINION |
| |) | |
| v. |) | |
| |) | |
| RMI Government (sic), |) | |
| |) | |
| Respondent/Appellant. |) | |
| |) | |

BEFORE: CADRA, Chief Justice; SEABRIGHT and KURREN, Associate Justices

CADRA, Chief Justice:

INTRODUCTION

Appellant, the RMI Government, seeks review of a July 11, 2014 decree of the High Court finding appellee, Laureano Lopez Sampang, qualified to register as a citizen under Article XI, Section 2(1) of the Constitution.

Appellant contends the High Court erred in finding Sampang qualified to register as a citizen questioning whether Sampang has “truly” met the three year actual residency requirement of the Constitution. There is no factual dispute that Sampang has been physically present in the Republic in excess of the three years required by the Constitution, Article XI, Section 2(1) for “citizenship by registration.” Instead, Appellant argues that Sampang was not “lawfully” in the Republic because Sampang, who entered the Republic as an “alien worker” for employment purposes, failed to acquire an “R-1 Visa” under the “Immigration Act,” 43 MIRC Section 130. Therefore, Appellant reasons that the three year period of residency has yet to commence.

Appellant further contends the High Court erred in not honoring a certificate from the Minister of Justice opposing Sampang’s registration as a citizen. Appellant argues 43 MIRC

Section 410 requires the High Court to accept the Minister of Justice's certificate without question.

For the reasons that follow, we reject the Government's assertions and affirm the decree of the High Court.

BACKGROUND

It is undisputed that Appellee Sampang, a citizen of the Republic of the Philippines, first arrived in the Republic of the Marshall Islands in 1990 and has physically been present in the Republic for more than three years. Appellee was married in the Republic of the Marshall Islands to a Marshallese citizen, Winny Daniel, and is the biological father of a Marshallese citizen, Wayne Sampang, who holds land rights in Mili. Appellee Sampang has no criminal record in the Republic and does not have any communicable disease which would pose a health risk to the public health and welfare. Sampang is gainfully employed as a skilled carpenter and electrician earning an income sufficient to support the needs of his family thus presenting no welfare risk or economic burden on the country. These facts as found by the High Court are not challenged on appeal and are supported by the testimony and documentary evidence adduced before the High Court at the July 11, 2014 hearing on Sampang's petition to register as a citizen.

In the proceedings before the High Court, the Government opposed Sampang's petition on the theory that he did not meet a "10 year" residency requirement imposed by Section 403(7)(b) of the Citizenship Act 1984, 43 MIRC Chpt. 4, which applies to citizenship by "naturalization." Section 403(7)(b) excludes periods for which the applicant was granted entry under the Labor (Non-Resident Workers) Act, 2006, from being counted towards the requisite ten years of residency for "citizenship by naturalization." The Government argued that Sampang did not meet the ten years residency requirement under 43 MIRC Section 403(7)(b) because he

was never issued an “immigration” visa, and was in violation of the immigration laws for failing to register with the immigration office.

The High Court considered Appellant’s arguments and concluded Sampang was not required to meet the “10 year” residency requirement set forth by Section 403(7)(b) because Section 403 applies to “citizenship by naturalization,” not “citizenship by registration” as sought by Sampang.

The High Court reasoned that residency for “citizenship by registration,” as applied for by Sampang, is addressed by Section 410(3) of the Citizenship Act. Section 410(3) excludes any period during which the person was not legally in the Republic as an immigrant in meeting the three year residency requirement of the Constitution, Article XI, Section 2(1)(b). The High Court concluded that the residency requirement for “citizenship by registration” under Article XI, Section 2(1)(b) of the Constitution does not exclude the period during which a person is granted entry under the Labor Act. There is no such exclusion contained in Section 410(3) and the High Court would not read into the statute a requirement which was not there.

The High Court further noted that 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. The High Court stated that until the Republic provides for an “immigrant visa” separate from other visas, the Court will continue to look to see if a petitioner was lawfully in the Republic under a visa or visa exemption.

The High Court considered the Minister of Justice’ certificate opposing citizenship and found it did not disqualify Sampang from registration on grounds of national security. The certificate merely stated Sampang was subject to a removal order and that he did not meet the 10 year residency requirement. The High Court found that Sampang had a pending application for a

visa on which the Republic had yet to rule, that no charges had been filed against Sampang for violation of the immigration laws and that Sampang's deportation had not been sought by the Republic.

The High Court concluded Sampnag is qualified to register as a citizen under Article XI, Section 2(1)(b). This appeal followed.

THE APPEAL ISSUES AS FRAMED BY APPELLANT

On appeal, the Government abandons its theory raised below that 43 MIRC 403(7)(b) governs this case. Rather, the Government questions whether Sampang has "truly met" the three year residency requirement of Article XI, Section 2. The Government also claims the High Court erred in not giving deference to the "Certificate for/against Citizenship" by the Minister of Justice.

ANALYSIS

1. Sampang met the three years of residency required by the Constitution

The RMI Constitution, Article XI, Section 2(1)(b) provides that a person who is not a citizen of the Marshall Islands shall become a citizen upon application if the High Court is satisfied that the person has been a resident in the Marshall Islands for a period of not less than three years, is the parent of a child that is a citizen of the Marshall Islands and is not disqualified on grounds of national security. Article XI, Section 2 of the Constitution read 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 in the interests of justice his application should be granted.

(1) 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.

(2) 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 to be registered as citizens pursuant to this Section, but who have not already been so registered.

Residency for citizenship by registration is covered by Section 410(3) of the Citizenship Act, which provides:

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.

And neither the Constitution nor Section 410(3) of the Citizenship Act excludes from the three year residency requirement any period during which the person was granted entry under the "Labor Act." To the contrary, evidence was introduced at the July 7, 2014 High Court hearing that Sampang was a legal resident of the RMI from 2006 through 2009, and was also legally resident in the RMI from 2011-2012 until May 5, 2014. The Government's Exhibit A, "Immigration Clearance" indicates Sampang had a "valid registration, employed by IBC" from 2006 to 2008; had a "valid registration, changed employers to KBE Local Gov't" in 2009; failed to register with Immigration in 2010; had a "valid change of status, registered as a spouse (visa: GENERAL) under Mrs. Winny Sampang. Valid until 5/4/14;" but failed to register in 2014. Despite the failure to register in 2014, the Government's Exhibit E indicates Sampang was granted a work permit from the Ministry of Foreign Affairs on May 9, 2013, with an expiration date of May 9, 2015. The High Court found, based on Sampang's testimony and the documentary

evidence, that Sampang has been a lawful resident of the Republic for at least three years prior to the date of the hearing. (*Decree*, p. 3, finding 4).

The High Court's finding of three years of residency in the Republic is supported by the record and is one of fact to which this court gives deference and will not set aside absent an abuse of discretion. We find no abuse of discretion in making this factual finding of residency within the Republic as required by the Constitution, Article XI, Section 2.

2. *The High Court did not err in refusing to give deference to the late filed Certificate for/against Citizenship by the Minister of Justice*

Section 410(2) of the Citizenship Act 1984 provides:

(2) In a case where any person applies for citizenship by registration under Article XI, Section 2 of the Constitution of the Marshall Islands, the Cabinet shall, within such time as may be prescribed by the High Court, submit to that Court a certificate stating whether in the opinion of the Cabinet such person is a fit and proper person to be registered as a citizen in the interests of national security; provided however, that the Cabinet may delegate its power under this Section to the Minister who shall submit the required certificate to the Court. A certificate under the hand of the Cabinet, or the Minister as the case may be, shall be conclusive proof of the matters therein stated and shall not be called in question in any court whether by way of writ or otherwise.

On April 9, 2014, the High Court issued an order requiring the Cabinet or the Minister of Justice to submit its national security certificate by May 7, 2014. That certificate was not filed until July 7, 2014, the day of the hearing on Sampang's petition. The High Court would have been justified under Section 410(2) in not considering the certificate because it was not timely filed. Nevertheless, the High Court did consider the certificate and found it did not disqualify Sampang on the basis of national security. The certificate merely states that Sampang does not meet the criteria for citizenship and passport issuance due to (1) subject to removal order due to no immigration record, and (2) that there is a 10 year requirement for citizenship by registration.

We, like the High Court, find the certificate does not disqualify Sampang from registration on the grounds of national security. The Government conceded at hearing that Sampang was not subject to a removal order nor is there any evidence that Sampang was subject to a removal order; there is no ten year requirement for citizenship by registration; and there is no reference in the certificate as to Sampang presenting a national security risk. Based on a *de novo* review of this predominately legal issue, we find no error in the High Court's refusal to deny Sampang's petition on the grounds of the certificate.

3. *Appellant waived the argument that an "R-1" visa is required for commencement of the three year period of residency*

In this appeal, the Government abandons its argument that Section 403(7)(b) governs this case and introduces a new argument not raised below -- that pursuant to 43 MIRC Section 130, Sampang must have acquired a "R-1 Visa" and only after acquiring an "R-1 Visa" does the three year period of actual residency begin to run. And, because Sampang never acquired an "R-1 Visa" the Government concludes the three years of actual residency has yet to commence.

It is well settled that issues not raised in the court below are considered waived on appeal. *Nashion v. Enos*, 3 MILR 83, 88 (2008); *Jeja v. Lajikam*, 1 MILR (rev.) 200, 205 (1990); *Clanton v. MI Chief Elec. Off.*, 1 MILR (Rev.) 146, 153 (1989); *Tibon v. Jihu*, 3 MILR 1, 5 (2005). We will thus not entertain this new argument on appeal.

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CONCLUSION

For the foregoing reasons, we AFFIRM the High Court's July 11, 2014, Decree finding Laureano Lopez Sampnag qualified to register as a citizen of the Republic of the Marshall Islands.

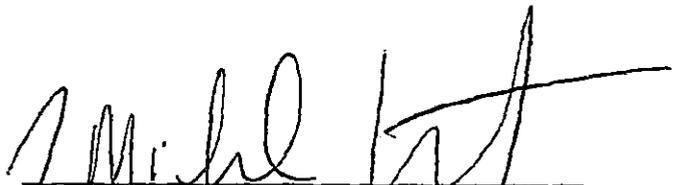
Dated this 26th day of October, 2015.



Danfel Cadra, Chief Justice



Barry Kurren, Associate Justice



Michael Seabright, Associate Justice