

15 December 2000

In the matter of an application by Edward Percy Michael Jones

And

In the matter of an application to register a birth on the Tongan Register

BEFORE THE HON. CHIEF JUSTICE WARD as REGISTRAR GENERAL

Counsel: V Foliaki for the applicant
S Tapueluelu for the Solicitor General

Date of Hearing: 15 June 2000

Date of Ruling: 22 June 2000

Ruling

This is an application to register the birth of the applicant in the Tongan birth register. The application was served on the Solicitor General and he indicated that he wished to be heard.

The applicant was born in Tonga on 1 August 1936 and his birth was registered with the Western Pacific High Commission under the terms of the English Pacific Order in Council, 1893. His father, Frederick Percy Jones, had been born in England in or about 1901 and his mother, Mary Dorothy Jones, had been born in Tonga in 1902. They were married in Tonga in June 1929.

His application is based on the principle that his nationality was determined at the time of his birth and, in accordance with the judgment of the Court of Appeal in the case of *Edwards v Kingdom of Tonga* (1994) Tonga LR 62, the nationality he acquired then was Tongan.

The basis of the decision in that case was that, when the appellant, Edwards, was born, there was no Nationality Act and the only provision that bore on the subject was the Constitution, which referred to "native born subjects of Tonga". The Court of Appeal ruled therefore that the matter must be determined under the common law rule that, with a few exceptions that do not apply in this or Edward's case, a person's nationality is determined by his place of birth. It can be stated in the words of Jowitt LC in *Joyce v*

Director of Public Prosecutions (1946) AC 347, which were adopted by our Court of Appeal:

"The natural-born subject owes allegiance from his birth.... The natural-born subject cannot at common law at any time cast it off."

As Edwards was born before any provision of Tongan law covered the situation, the common law rule applied and he was a Tongan subject by the very fact of being born here. The same situation applies to Mr Jones' mother who clearly was a Tongan by right of birth.

The position changed on 3 July 1935, the year after Edward's birth, when the Tongan Nationality Act came into effect. Section 2 of that act provided:

"2. The following persons shall be deemed to be Tongan subjects:

- (a) any person born in Tonga of Tongan parentage.....;
- (b) any person naturalized in Tonga under the Naturalization Act 1915;
- (c) any person born out of wedlock in Tonga whose father is a Tongan subject and whose mother is an alien; and
- (d) any person born out of wedlock in Tonga whose mother is a Tongan subject ad whose father is an alien."

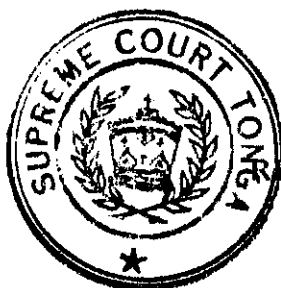
Thus, by the following year when the present applicant was born, the rule under the common law had been superceded by the new Act and so his nationality was determined by those provisions. Unless he fell into one of the categories in section 2, he did not acquire Tongan nationality.

The applicant was born in Tonga. His mother was Tongan but his father was not. Is that sufficient to establish his qualification under section 2 (a) as a person born in Tonga of Tongan parentage? Unfortunately for Mr. Jones it is not.

In Edward's case the Court considered this provision and the equivalent phrase in the Tongan version of the Laws " 'ogo matu'a Toga". That, they felt, made it clear that Tongan parentage required both parents to be Tongan. Although obiter, I agree with the Court's reasoning and accept that is the correct interpretation of the phrase "Tongan parentage". It is perhaps a wry comment that, had his parents not been married at the time the applicant was born, he would have qualified under 2(d).

The two years difference in the ages of Edwards and the applicant is critical and defeats his claim. The application to register his birth in the Tongan Register must be refused.

NUKU'ALOFA: 22nd June 2000.



G Ward

REGISTRAR GENERAL