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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10015/2018**

NATALYA MAMRENKO Petitioner
Through Mr Sunil Kumar Sharma, Advocate.

Versus

UNION OF INDIA AND ORS. Respondents
Through Mr Jaspreet Singh, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
ORDER
% **24.09.2018**

VIBHU BAKHRU, J

C.M. No. 39014/2018

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 10015/2018

3. Issue notice. The learned counsel appearing for the respondent accepts notice. The petition is taken up for final hearing.
4. The petitioner has filed the present petition, *inter alia*, praying as under:-

“(i) Direct the respondents to issue OCI card to the petitioner in lieu of her (PIO) “Persons of Indian Origin” Card No. P-0563644 which is valid upto 21.11.2026.”

5. The petitioner is a citizen of Uzbekistan and claims that she is married to Mr Krishan Mohan Lal Nayyar. She claims that the marriage was

solemnised at Arya Samaj Mandir, Malviya Nagar, New Delhi as per Hindu rites on 30.05.2006. The petitioner and her husband were blessed with two children who are now aged about 10 and 12 years respectively. There is no dispute that both the children are Indian citizens and hold Indian passports. The petitioner states that she has been living in her matrimonial home along with her parents-in-law since the day of her marriage. It is also asserted that she is taking care of her father-in-law who is more than 82 years of age. However, the petitioner's mother-in-law was ailing and has since expired. She states that her husband Krishan Mohan Lal Nayyar no longer lives with her and she does not know his whereabouts. It is also asserted that her husband does not visit his ailing father (the petitioner's father-in-law).

6. The petitioner was issued a Persons of India Origin (PIO) Card No. P-0563644 on 22.11.2011 by the FRRO, New Delhi. The said card was valid for a period of fifteen years; that is upto 21.11.2026. The Government of India withdrew the PIO Card Scheme by a notification dated 09.01.2015. The PIO card has now been replaced by creating a category –Overseas Citizens of India (OCI) – with the statutory amendments being introduced in the Citizenship Act, 1955. By a Circular dated 15/16.01.2015 all FRRO's have been informed that PIO cards are deemed to be OCI cards. The PIO Card holders are now entitled to be considered as Overseas Citizens of India if they qualify the criteria as set out in Section 7A of the Citizenship Act, 1955 as amended by The Citizenship (Amendment) Act, 2015.

7. In the aforesaid context the petitioner applied for an OCI Card. Her grievance is that her application has not been processed as yet and this has led her to approach this Court.

8. Mr Jaspreet Singh learned counsel who appears on advance notice states on instructions that the only reason why the petitioner's application has not been processed as yet is that the whereabouts of her spouse have not been ascertained. He also has referred to the provisions of Section 7D(f) of the Citizenship Act, 1955 which reads as under:-

“7D. Cancellation of Registration as Overseas Citizens of India Cardholder.—The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A, if it is satisfied that –

XXXX

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(f) the marriage of an Overseas Citizen of India Cardholder, who has obtained such Card under clause (d) of sub-section (1) of section 7A, -

(i) has been dissolved by a competent court of law or otherwise; or

(ii) has not been dissolved but, during the subsistence of such marriage, he has solemnised marriage with any other person.”

He states that enquiries are still being held to ascertain whether the petitioner would be disentitled to an OCI Card in terms of Clause (f) of Section 7D of the Citizenship Act, 1955.

9. I have heard the learned counsel for the parties.

10. There is no dispute that both the children of the petitioner were born in India and are Indian citizens. Concededly, there is also no material available with the respondents that would lead them to disbelieve the statements made in the present petition. It is also not disputed that all

persons who were issued PIO Cards would also qualify for being issued OCI Cards under Section 7A of the Citizenship Act, 1955.

11. In so far as the reference to clause (f) of section 7D of the Citizenship Act, 1955 is concerned, the same is clearly inapplicable in the facts of the present case. There is no material on record to show that the petitioner's marriage with her husband is dissolved by a decree of divorce from a Court of competent jurisdiction or otherwise. There is also no material on record to show that the petitioner has solemnised a marriage with any other person. In the circumstances, this Court is of the view that the petitioner's application for an OCI Card cannot be denied. The respondents are, accordingly, directed to process the same and issue an OCI Card to the petitioner as expeditiously as possible and preferably within a period of one month from today.

12. Having stated the above, it is also necessary to observe that the respondents are not precluded from continuing their investigations or inquiries to ascertain the current status of the petitioner/her husband. In the event, the respondents find any material which satisfies them that the provisions of Clause (f) of Section 7D are applicable, they are not precluded from cancelling the OCI Card, in accordance with law.

13. The petition is disposed of in the above terms

14. Order *dasti*.

VIBHU BAKHRU, J

SEPTEMBER 24, 2018

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