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

Date of Decision : 22.07.2021

+ **W.P.(C) 10807/2020**

BAHAREH BAKHSHI

..... Petitioner

Through Mr. Ankur Mahindro, & Mr. Rohan
Taneja, Advs.

versus

UNION OF INDIA

..... Respondent

Through Ms. Nidhi Banga, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition has been filed by an Iranian citizen, who is married to an Indian citizen and is aggrieved by the respondent's refusal to consider her application for grant of Overseas Citizenship of India (OCI) card.
2. The petitioner's marriage to one Mr. Paul Fel-El-Dingo D'Silva, an Indian citizen, was solemnised in Dubai, UAE on 13.05.2009, after he had converted to Islam on 30.11.2008. The marriage certificate issued to the couple was translated by an Authorised Translator and certified by the Consulate General of India at Dubai, UAE. However, the petitioner claims that disputes arose between Mr. Paul and her, shortly after they consummated the marriage, which led to her initial return to Iran and her subsequent relocation to Bengaluru at his insistence. It is the petitioner's

case that Mr. Paul claimed to have financial difficulties which motivated her to pursue her Postgraduate degree in Biotechnology in Bengaluru and her Doctorate from Mysore University to contribute to the family income. However, in the meanwhile, the relationship soured between the petitioner and Mr. Paul and he left her in Bengaluru, to reside with his family in Goa. Consequently, the petitioner instituted a maintenance petition under Section 125 of the Criminal Procedure Code, 1973, against her estranged spouse, before the learned Family Court in Bengaluru and was awarded a monthly maintenance amount of Rs.15,000/-. Mr Paul appealed against this order before the High Court of Karnataka, but was unsuccessful. On 14.11.2020, the petitioner generated her application for an OCI card on the basis of her marriage to Mr. Paul, and went to submit it to the local FRRO in Bengaluru on 04.12.2020 – however, the officials refused to accept the form stating that the presence of Mr. Paul was requisite for processing her application. It is in this context that the present petition has come to be filed, the petitioner is aggrieved by the respondent's insistence on the physical/virtual presence of her estranged spouse, who is admittedly an Indian citizen, for the purpose of processing her OCI card application.

3. In support of the petition, learned counsel for the petitioner submits that once the petitioner's marriage with an Indian citizen since the year 2009 has been proved and is an undisputed fact, the same should be enough to merit grant of an OCI card in her name. He submits that since the petitioner's estrangement from Mr. Paul, her Indian husband, forms the basis of matrimonial litigation, it should come as no surprise that there is some acrimony between them and that the said Mr. Paul would not be inclined to cooperate with the petitioner for helping her OCI card application. He

contends that thus, in these circumstances, the mere absence of the petitioner's spouse, who is refusing to come to India on account of the *inter se* litigation between the parties in various Indian Courts, cannot be a ground for the respondent to insist that the petitioner's application will not be considered without the physical/virtual presence of her estranged spouse. In support of his contention he seeks to place reliance on a decision of a Coordinate Bench of this Court in ***Natalya Mamrenko Vs. Union of India and Ors.*** W.P.(C) 10015/2018. He submits that once the respondent do not dispute that the petitioner was indeed married to an Indian citizen, there is absolutely no reason as to why it can refuse to consider the petitioner's application strictly as per Section 7A of the Citizenship Act, 1955. He, thus, prays for a direction to the respondents to process the petitioner's application for an OCI card without insisting on her husband's interview therefor.

4. On the other hand, learned counsel for the respondent, Ms. Nidhi Banga, while not disputing the fact that the petitioner is seeking issuance of an OCI card on the strength of her marriage with an Indian citizen and therefore satisfies the condition laid down in Section 7A(id), contends that unless the petitioner's spouse comes forward at the time of making the OCI card application, the respondent cannot even consider the same. In support of her submission, she seeks to rely on a checklist prescribed by the respondent for submission of the OCI card application. The said checklist is annexed to the petition as Annexure A-8. She submits that the checklist clearly states that, as on the date of submission of the OCI card application, both the spouses must be present for an interview with the respondent. She also seeks to place reliance on a Chapter 21 of the Visa Manual (April

2021), especially paragraph 21.2.5 (vi) thereof, which reads as under:

“2.5 (vi) With a view to curb the practice of entering into a marriage of convenience just to obtain OCI cards by foreign nationals, a mandatory verification step of personal interview (either physical or through video conference) of all OCI applicants who apply for registration as OCI cardholder under section 7A(1)(d) of the Citizenship Act, 1955 (i.e. spouse basis) has been introduced. This personal interview shall be conducted by the Indian Mission/ Post/ FRRO concerned at the time of document verification stage itself and the OCI application on spouse basis shall be acknowledged on the online system only after the personal interview has been held and the Indian Mission/ Post/ FRRO concerned have satisfied themselves about the suitability of the applicant for registration as OCI cardholder. A report on the personal interview along with recommendation of the Indian Mission/ Post/ FRRO concerned shall also be uploaded on the online system. During such personal interview, the Indian Mission/ Post/ FRRO concerned may put random questions to the foreign applicant and his/ her spouse separately to elicit information which may help in ascertaining the genuineness of the marital status of the applicant. The information provided during the personal interview may be tallied with the information, if any, provided in the application form with reference to similar questions.” (emphasis supplied)

5. Having considered the submissions of the parties as also the decision of this Court in *Natalya Mamrenko* (*supra*), I am unable to find any merit in the respondent's contention. The entire premise of the respondent's decision to refuse the petitioner's OCI card application at the threshold hinges upon its interpretation of paragraph 21.2.5(vi) of Chapter 21 of its Visa Manual. The respondent claims that in all cases where an application for an OCI registration on spouse basis is made, the provision makes it mandatory for

the couple to be present at the time of submitting the application. However, on a perusal of the provision in question, I find that it merely makes it requisite for *all OCI applicants* to be present for a personal interview, either physically or through video conferencing. Insofar as the respondent's Checklist for OCI Application submission is concerned, appended as Annexure A-8 to the present petition, given that there is no rule or guideline which mandates the presence of both the spouses at the time of making application for an OCI card, it is surprising that the Checklist was formulated in a manner to impose such a condition. Even upon being queried, the respondent is unable to point out the basis on which such a condition has come to be formulated by it. Thus, the very imposition of such a requirement on OCI card applicants, being unsupported by any Rule/Formal Guideline, cannot be permitted to operate. In these circumstances, the only two reasons given by the respondent for its refusal to consider the petitioner's application for an OCI card on marriage basis, do not hold ground and the petition is entitled to succeed.

6. Accordingly, the petition is allowed by directing the respondent to accept the petitioner's application and process the same in accordance with law. The said examination will be carried out within a period of six weeks. In case the petitioner is aggrieved by any order passed by respondent, it will be open for the petitioner to take legal recourse as per law.

7. Needless to say, in case the respondent, for any justifiable reasons, does not find merit in the petitioner's application, it will be open for it to reject the same after assigning reasons.

8. The petition is disposed of in the aforesaid terms.

REKHA PALLI, J

JULY 22, 2021

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