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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 22nd December, 2022

+ **W.P.(C) 16212/2022**
SHABNAM (MOTHER OF BABY MARVIN UZOZIE).... Petitioner
Through: Mr. Fuzail A Ayyubi & Ms. Akanksha Rai (M-9811430201)

versus
UNION OF INDIA & ORS. Respondents
Through: Mr. Farman Ali, SPC with Ms. Usha Jamnal & Mr. Krishan Kumar, Advocates for UOI (M-9469448888)

AND

+ **W.P.(C) 16339/2022**
SHABNAM Petitioner
Through: Mr. Fuzail A Ayyubi & Ms. Akanksha Rai

versus
UNION OF INDIA & ORS. Respondents
Through: Mr. Farman Ali, SPC with Ms. Usha Jamal & Mr. Krishan Kumar, Advocates for UOI.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

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2. The Petitioner-Shabnam who is the wife of a Nigerian national Mr. Desmond Okechukwu Uzozie, has filed the present writ petition seeking the issuance of a passport for her minor child who was born on 25th June, 2021.

3. It is not disputed that the child was born in India.

4. When the Petitioner applied for the Indian passport of her minor child, on 28th October 2021, an interview appointment was given to the Petitioner

for the same day. The Petitioner claims that after attending the said interview at the Passport Seva Kendra, Herald House, New Delhi, all formalities regarding the issuance of a Passport to the Petitioner's son were completed. However, to date, the passport application of the Petitioner's son has not been granted. Further, it is claimed that as per the passport office website, the said application is still under review at the Regional Passport Office. Thus, the Petitioner has preferred this writ petition.

5. A status report was called from the Regional Passport Office (RPO). The said status report has been filed in compliance with the order dated 24th November, 2022. The status report filed by the RPO confirms that the child was born in Bihar on 25th June, 2021. The certificate of birth has also been submitted to the passport office. The stand of the RPO is that under Section 3(1)(c)(ii) of the Citizenship Act, 1955, a child who takes birth in India after 2003 would be entitled for citizenship by birth, subject to the either of the two conditions i.e.,

- if both parents are citizens of India or
- if one of the parents is a citizen of India and the other is of a foreign nationality and is not an illegal migrant at the time of child's birth

6. It has been highlighted by the Id. Counsel for the Respondents that if the foreign national parent is an illegal migrant at the time of the birth of the child, citizenship would not be granted to the child born in India.

7. Citing this provision, it is the stand of the Respondents that when the child was born, the child's father was an illegal migrant who had been issued an exit permit to leave India. The Respondents further submit that the child's father was guilty of overstaying in India, violating the Visa conditions for a period of five years.

8. A letter dated 25th November, 2022 has also been annexed with the status report which is capturing the position of the RPO. The said letter reads as:

“This is in reference to passport application vide file number DL1065768865621 dated 28.10.2021 in respect of Master’ Marvin Ugochukwu Uzozie’ for which you have furnished copy of passport of the parents of the applicant.

2. Upon receipt of the said application, it is found that the father of the applicant is a Nigerian national. The matter was examined and it has been brought into the notice of this office that father of the applicant was not present in India at the time of birth of the applicant.

3. In view of the above, you are requested to kindly produce any documents to proof that father of the applicant was legal migrant at the time of birth of the applicant. You may furnish visa pages of passport booklet of the father of the applicant, depicting travel details at the time of applicant birth.

4. You may visit this office on any working days to furnish above said documents so that further necessary action could be taken on issuance of passport.”

9. Mr. Ayyubi, Id. Counsel for the Petitioner submits that, an exit permit dated 27th March, 2021 was issued by the Foreigners Regional Registration Office (FRRO) to the Petitioner’s husband permitting him to exit India on or before 2nd May, 2021 and an overstay penalty of Rs.20,000/- was also imposed. After that, the Petitioner’s husband admittedly exited India on 6th April, 2021. Thus, when the child was born on 25th June, 2021, the child’s father, i.e. the Petitioner’s husband, cannot be treated as an illegal migrant, as he was no longer in India and had exited with a valid Exit Permit.

10. Mr. Ali, Id. Counsel for the Respondents, on the other hand, submits that the child's father would continue to remain an illegal migrant, and the paying of the overstay penalty would not change this position.

11. Heard. A perusal of the birth certificate placed on record shows that the child was born in Bihar, India. It is not disputed that the Petitioner herein is a citizen of India. The issue has arisen because of the overstaying of the father, who is a Nigerian national. The exit permit placed on record shows that the visa granted to the father expired on 30th June, 2016, and he was therefore, directed to exit before 2nd May, 2021. Overstaying penalty of Rs.20,000/- was also charged. The question is, therefore, whether in these facts the child is to be considered as an Indian Citizen and issued a passport or not by the Indian Passport Office.

12. The facts of this case would show that the child currently does not have any citizenship because the father has already left for Nigeria and has also been blacklisted for his overstaying. The blacklisting period exists till April, 2023. Furthermore, the mother is an Indian citizen. Thus, if the child is not issued a passport in these circumstances, even the mother would not be able to travel to Nigeria. In these facts and circumstances, the Court is considering the question of the issuance of a passport for the child.

13. Considering the fact that the father had left for Nigeria within the period as per the exit permit and the child was born in India, thereafter, it is deemed appropriate to direct the passport authorities to consider the application of the Petitioner, verify all the documents and issue the passport within 45 days to the child.

14. The Petitioner is to appear before the passport office on 5th January, 2023 at 11:00 a.m.

15. This order is being passed in the unique facts and circumstances of the present case and shall not be treated as a precedent.

16. With these observations, the writ petition and all pending applications are disposed of.

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17. In this petition, the blacklisting of the husband, who is a Nigerian national, has been challenged. Admittedly, the Petitioner's husband had overstayed in India and was issued an exit permit, and he was directed to exit India by 2nd May, 2021. He exited India on 6th April, 2021. However, the blacklisting period comes to an end on 5th April, 2023.

18. Mr. Ali, Id. Counsel for the Respondent submits that the said blacklisting period is not likely to be extended any further.

19. In these circumstances, no interference is called for in respect of the blacklisting order, subject to the condition that the said order would not come in the way of the son's passport application being considered as directed above. The statement made by Mr. Ali, Id. Counsel is taken on record.

20. With these observations, the writ petition and all pending applications are disposed of.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 22, 2022/dj/am