



WEB COPY



W.P.No.25150 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25150 of 2015

Mrs.Kiran Zohra Hussain

...Petitioner

Vs.

1.The Secretary (Foreigner's division)

Ministry of Home Affairs,
NDCC-II,
Jai Singh Road,
New Delhi – 110 001.

2.Foreigners Regional Registration Office (FRRO)

Bureau of Immigration, Ministry of Home Affairs,
Government of India,
Shastry Bhavan Annexe,
Chennai – 600 006.

3.The Principal Secretary to Government,

Home Department, Secretariat, Fort St.George,
Chennai – 600 009.

(R3 – Suo Motu impleaded vide order dated
30.01.2023 made in W.P.No.25150/2015)

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India,
to issue a Writ of Certiorarified Mandamus, to call for the records and quash
the Exit order dated 26.04.2012 passed by the 1st Respondent and



W.P.No.25150 of 2015

consequently to direct the 1st and 2nd respondents to issue either X-Visa or grant permanent citizenship of India to the petitioner as expeditiously as possible. (Prayer amended as per order dated 06.11.2015 in M.P.No.2 of 2015 in W.P.No.25150 of 2015)

For Petitioner : Mr.R.Mohan Doss

For R1 & R2 : Mr.R.Rajesh Vivekananthan
Deputy Solicitor General of India

For R3 : Mr.Abishek Murthy
Government Advocate

ORDER

The writ petition has been filed, challenging the Exit order dated 26.04.2012 passed by the 1st Respondent and for a direction to direct the 1st and 2nd respondents to issue either X-Visa or grant permanent citizenship of India to the petitioner as expeditiously as possible.

2. The petitioner states that she married one Mr.Mohamed Jawad on 24.07.1997 and the marriage was registered on 23.10.2000 vide marriage registration certificate bearing No.9/2000 on the file of the SRO, Mylapore. The husband of the writ petitioner is an Indian National, holding a valid Indian Passport.



WEB COPY

3. The writ petitioner is residing along with her husband at Chennai from the year 1997 till 2003 on a long term residential permit granted by the Government of India. The petitioner was given Police Clearance Certificate on 09.07.2000 for her long term stay. The petitioner and her husband in the year 2003, immigrated to Canada. She acquired Canadian Nationality in March 2007. Thereafter, she had renounced her Pakistani citizenship in July 2008. In August 2008, the petitioner had applied for 'X' Visa (Entry Visa) at the Consulate General of India, Toronto, Canada. The visa officer concerned issued a 'T' Visa (Tourist Visa) for six months by stating that the petitioner can apply and convert the Tourist visa to 'X' Visa after arrival in India. Accordingly, after arriving to India on 13.09.2008, the petitioner had applied for registration as a foreigner and for conversion of Tourist Visa to 'X' Visa on 25.10.2008 before the 2nd respondent.

4. The application was forwarded to the Ministry of Home Affairs (MHA), New Delhi for approval. Meanwhile on 15.01.2009, the petitioner gave birth to a male baby boy by name Taher Mohammad at Apollo Med Hospitals, PH Road, Chennai – 600 010.



W.P.No.25150 of 2015

5. The boy is now studying X Standard. Under these circumstances, the learned counsel for the petitioner made a submission that the petitioner submitted an application for registration of citizenship and for grant of long term visa. Both the applications were submitted thrice, but were not considered.

6. The learned Deputy Solicitor General of India appearing on behalf of the respondents 1 and 2 objected the said contention by stating that the marriage between the petitioner and her husband was solemnized on 24.07.1997 at Karachi, Pakistan and she was holding two Passports during the relevant point of time i.e., Canadian Passport and Pakistani Passport. She had arrived to India based on the Tourist Visa and the application was not submitted within the time prescribed and thus, the authorities have not considered for grant of long term Visa as per the application submitted by the petitioner. Since the petitioner had overstayed in India, impugned Exit order was passed in accordance with the provisions of the Act.

7. If at all the petitioner is residing in India for a continuous period without proper visa or citizenship, then it is to be considered as illegal and



W.P.No.25150 of 2015

thus, the said illegality cannot be cured by the officials, which would be otherwise in violation of the provisions of the Act and Rules.

8. The learned counsel for the petitioner furnished the copy of the circular issued by the Ministry of Home Affairs, Government of India, in which, Serial Nos.42 and 47 provides clarification of grant of 'X' Visa and long term Visa and the same reads as under:

<i>S.No.</i>	<i>Type of Visa</i>	<i>Visa related service</i>	<i>Powers delegated</i>
42	'X' Visa	Regularization of stay of foreign nationals married to Indian nationals – Conversion to 'X' Visa	There are foreigners who had entered India on Tourist Visa and have been staying in India for many years due to marriage to Indian Nationals. FRROs/FROs are delegated powers to regularize their stay, convert their visas to Entry (X) visa and grant further extension of visa on case to case basis subject to verification of marital status fully supported by marriage certificate issued by authorities authorized by the State Government/UT Administration for registration of marriages, security vetting, profile of activities etc.,
47	Long Term Visa (Pakistani nationals)	Extension of Long Term Visa (LTV) in respect of Pakistani nationals	As per extant instructions, the following categories of Pakistani nationals are eligible for grant of Long Term Visa (LTV) to enable them to qualify for Indian Citizenship:-



W.P.No.25150 of 2015

WEB COPY

<i>S.No.</i>	<i>Type of Visa</i>	<i>Visa related service</i>	<i>Powers delegated</i>
			(i) Members of minority communities in Pakistan (Hindus, Sikhs, Christians and Buddhists) (ii) Pak women married to Indian nationals and staying in India. (iii) Indian women married to Pak nationals and returning due to widowhood/divorce and having no male member to support them in Pakistan. (iv) Cases involving extreme compassion. Approval for conversion of short-term visas into Long Term Visas and the first year extension is granted by the Central Government. Powers for grant of subsequent extensions of LTV in respect of categories (i), (ii) and (iii) above on a two year basis at a time till they are granted Indian citizenship are delegated to the State Governments/UT Administrations concerned subject to good behavior and validity of their passports. However, extension of LTV in respect of persons falling in category (iv) i.e., cases involving extreme compassion, will have to be referred to the Ministry of Home Affairs for approval.

9. Relying on the above circular, the learned counsel for the petitioner



W.P.No.25150 of 2015

reiterated that the petitioner has already filed a memo before this Court on 28.02.2023 in USR.No.6769/2023 and the same reads as under:

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

W.P.NO.25150 of 2015

KIRAN ZOHRA HUSSAIN

.....Petitioner

-VS-

1. The Secretary (Foreigner's Division)
Ministry of Home Affairs
New Delhi - 110001

2. Foreigner's Regional Registration Office (FRRO)
Bureau of Immigration, Ministry of Home Affairs,
Government of India
Chennai 600 006

3. The Principal Secretary to Government
Home Department, Secretariat,
Fort St. George, Chennai-600009.

.....Respondents

MEMO FILED BY THE PETITIONER

The Petitioner humbly submits as follows:

The Petitioner on 13.02.2023 was directed by this Hon'ble Court to file a Memo with respect to her Plan of Action for exiting and returning the country.

A) The Petitioner will exit on 22.04.2023 to Dubai and enter India on 02.05.2023 solely for the purpose of regularising the present arrangement



W.P.No.25150 of 2015

WEB COPY

(ii) The Respondents shall permit the Petitioner to file an application seeking long term Visa on the strength of her marriage to Mohamed Jawad on 27.04.1997 and grant X-Visa prior to her departure.

(iii) The Respondents shall grant X-visa either prior to her departure from India or at the time of entering India.

iv) The Respondents should not place any objections or prevent her from entering India.

DATED AT CHENNAI ON THIS THE 27TH DAY OF FEBRUARY 2023


COUNSEL FOR THE PETITIONER

10. In response to the memo filed by the petitioner, the respondents filed a reply memo before this Court on 01.03.2023 and the same is as follows:



WEB COPY



W.P.No.25150 of 2015

Res pdt/215/23

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(SPECIAL ORIGINAL JURISDICTION)**

WP. NO. 25150 OF 2015

Kiran Zohar Hussain

..Petitioner

-Vs-

1. The Secretary (Foreigner's Division)
Ministry of Home Affairs
New Delhi - 110 001

2. Foreigner's Regional Registration Office (FRRO)
Bureau of Immigration, Ministry of Home Affairs,
Government of India
Chennai- 600 006

..Respondents

REPLY MEMO FILED BY THE RESPONDENTS

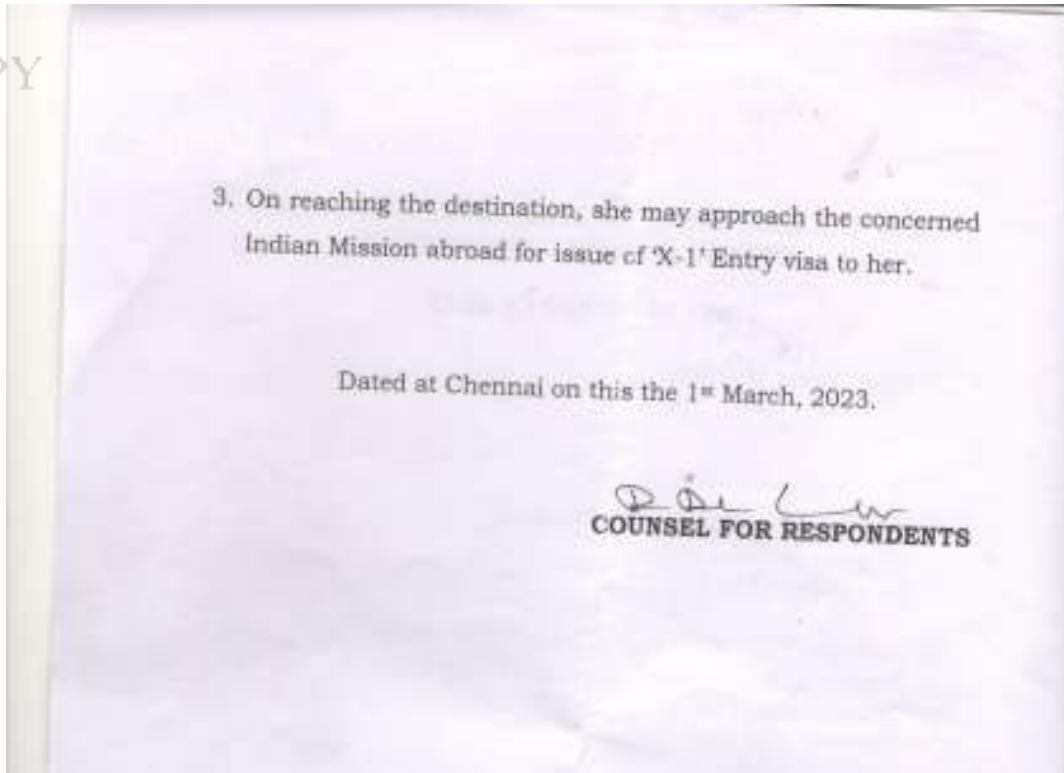
The Respondents state as follows:

1. The interim order dated 13.2.2023 passed by the Learned Judge of the Hon'ble Madras High Court in the present writ petition has been carefully considered.
2. The petitioner has to apply for the Exit Permit before the 2nd Respondent. On her application after getting necessary visa fees and penalty and also subject to the police verification report, the same shall be granted.



W.P.No.25150 of 2015

WEB COPY



11. It is brought to the notice of this Court that the petitioner is continuously residing in India along with her family at Chennai from the year 2008 onwards. The son of the petitioner is now studying X Standard at Chennai. The writ petitioner is a Home maker and there is no adverse remarks against her and the Police Report given in the year 2015 reveals that there is no threat as far as the petitioner is concerned. On the strength of the police report, the learned counsel for the petitioner reiterated that the petitioner is eligible for grant of long term Visa, pursuant to the clarification issued by the Ministry of Home Affairs.



W.P.No.25150 of 2015

WEB COPY

12. The learned Government Advocate appearing on behalf of the third respondent / State of Tamil Nadu made a submission that the current status about the activities of the petitioner has not been verified by the Police on account of the pendency of the writ petition.

13. Reply memo filed by the respondents 1 and 2 would reveal that the petitioner has to apply for Exit permit before the 2nd respondent, who in turn will consider and subject to police verification, grant permission. On reaching the destination, the petitioner may approach the concerned Indian Mission abroad for issue of 'X-1' Entry Visa to her, which is to be granted by following the procedures as contemplated.

14. The learned Deputy Solicitor General of India appearing on behalf of the respondents 1 and 2 made a submission that if the application is in a proper format and if necessary documents are furnished by the petitioner, then the authorities would consider the same on merits.



W.P.No.25150 of 2015

15. In view of the memo and reply memo filed by the petitioner and the respondents, the petitioner is at liberty to submit an application for exit permit before the 2nd respondent, which is to be considered without causing any delay since the petitioner has stated that she will exit on 02.04.2023. Regarding the 'X-1' Entry Visa, the petitioner has to apply before the Indian Mission abroad for necessary orders.

16. With this liberty, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

09.03.2023

Index : Yes
Speaking order
Neutral Citation: Yes
kak

To

1. The Secretary (Foreigner's division)
Ministry of Home Affairs,
NDCC-II,
Jai Singh Road,
New Delhi – 110 001.



W.P.No.25150 of 2015

2. Foreigners Regional Registration Office (FRRO)
Bureau of Immigration, Ministry of Home Affairs,
Government of India,
Shastry Bhavan Annexe,
Chennai – 600 006.

3. The Principal Secretary to Government,
Home Department, Secretariat, Fort St. George,
Chennai – 600 009.



WEB COPY



W.P.No.25150 of 2015

S.M.SUBRAMANIAM, J.

kak

W.P.No.25150 of 2015

09.03.2023