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(DECREE NO. 23)

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CITIZENSHIP OF FIJI DECREE 2009

GOVERNMENT OF FIJI
(DECREE NO. 23)A DECREE TO PROVIDE FOR THE ACQUISITION, RENUNCIATION
AND DEPRIVATION OF CITIZENSHIP OF THE STATE

IN exercise of the powers vested in me as President and Commander in Chief of the Republic of the Fiji Military Forces I hereby make the following Decree:

Part 1—PRELIMINARY

Short title and commencement

1. This Decree may be cited as the Citizenship of Fiji Decree 2009 and shall be deemed to have come into force on the 10th day of April 2009.

Repeal of existing enactments

2. The Citizenship Decree 2009 (Decree No. 7) and the Citizenship Act 1998, together with all subsidiary legislation made thereunder, are hereby repealed.

Interpretation

3. In this Decree, unless the contrary intention appears—

“adult” means a person who is 18 years old or over;

“application for registration” means an application for citizenship under section 9;

“application for naturalisation” means an application for citizenship by naturalisation under section 12;

“approved form” means a form approved by the Minister;

“commencement date” means the date on which this Decree is deemed to have come into force in accordance with section 1;

“Secretary” means the Permanent Secretary responsible for the Immigration Department.

Part 2 – ACQUISITION OF CITIZENSHIP

Retention of existing citizenship

4. The coming into force of this Decree does not affect the citizenship of a person who was a citizen immediately before the commencement date.

Way in which citizenship may be acquired

5. Citizenship may be acquired by—

(a) birth;

(b) registration; or

(c) naturalisation.

Citizenship by birth

6. Every child born in Fiji on or after the commencement date becomes a citizen at the date of birth unless, at the date of birth—

(a) a parent of the child has the diplomatic immunity accorded to envoys of sovereign foreign powers accredited to Fiji; and

(b) neither parent is a citizen.

Infant found abandoned in Fiji

7. An infant found abandoned in Fiji is deemed to have been born in Fiji in the absence of proof to the contrary.

Part 3 – CITIZENSHIP BY REGISTRATION

Who may apply for registration

8.—(1) A child born outside Fiji may become a citizen by registration on or after the commencement date if, at the time of the child's birth, either parent was a citizen.

(2) A foreign child adopted by a citizen when the child was under the age of 18 may become a citizen by registration.

(3) A child who was under the age of 18 when either parent became a citizen may become a citizen by registration.

(4) An application for registration under subsection (1), (2) or (3) may be made at any time during the child's lifetime and, if he or she is under the age of 18 at the date of the application, may be made on his or her behalf by a parent or guardian.

(5) An application for registration under subsection (1), (2) or (3) made by the child concerned after he or she has reached the age of 18 must not be granted unless he or she has been lawfully present in Fiji for a total of 3 of the 5 years immediately before the application.

(6) An application for citizenship by registration made by an adult who is a citizen of another country must be granted if the person was formerly a citizen of the State save that the Minister may refuse the application if the applicant fails to satisfy the Minister that the applicant is a person of good character.

(7) An application for citizenship by registration made by an adult who is or has been married to a citizen must be granted if the applicant:

- (a) has been lawfully present in Fiji for a total of 3 of the 5 years immediately before the application; and
- (b) complies with the conditions prescribed by subsections (8) and (9).

(8) If, in respect of an application to which subsection (7) applies, the Minister forms the opinion that the applicant is a person who entered into a marriage with a citizen that was not a genuine and continuing marital relationship, the Minister may, by notice in writing, require the applicant to satisfy the Minister that the marriage was or is intended to result in a genuine and continuing marital relationship.

(9) If, within a reasonable time after receipt of a notice under subsection (8), the applicant fails to satisfy the Minister that the marriage was or is intended to result in a genuine and continuing marital relationship, the Minister may refuse to grant the application for registration.

Application for registration

9.—(1) An application for registration must be made to the Minister in the approved form.

(2) An application for registration as a citizen must be accompanied by the prescribed fee.

Grant of application

10.—(1) Subject to subsection (2), upon—

- (a) receipt by the Minister of—
 - (i) a duly completed application for registration; and
 - (ii) the prescribed fee; and

(b) the making by the applicant of an oath or affirmation of allegiance as set out in Schedule 1, the Minister, if satisfied that the applicant is entitled to be registered as a citizen under section 8, must grant to the applicant a certificate of registration without delay.

(2) An applicant who is under the age of 18 at the date on which the application is made is not required to make the oath or affirmation required under paragraph (b) of subsection (1) as a condition of being granted a certificate of registration but shall do so as soon as reasonably practicable after attaining that age.

Part 4 – CITIZENSHIP BY NATURALISATION

Availability of citizenship by naturalisation

11.—(1) An adult person may become a citizen by naturalisation.

(2) In order to qualify for the grant of a certificate of naturalisation under section 13 a person must have been lawfully present in Fiji for a total of 5 of the 10 years immediately before the application for naturalisation is made.

Application for naturalisation

12.—(1) An application for naturalisation must be made to the Minister in the approved form.

(2) An application for naturalisation must be accompanied by the prescribed fee.

Grant of application

13.—(1) Upon—

(a) receipt by the Minister of:

- (i) a duly completed application for naturalisation; and
- (ii) the prescribed fee; and

(b) the making by the applicant of an oath or affirmation of allegiance as set out in Schedule 1,

the Minister, if satisfied that the conditions prescribed by section 11(2) has been met, but subject to subsection (2), may grant to the applicant a certificate of naturalisation.

(2) The Minister may refuse to grant a certificate of naturalisation if the applicant fails to satisfy the Minister that the applicant—

- (a) is of good character;
- (b) has adequate knowledge of the English language and of the responsibilities of a citizen of Fiji; and
- (c) intends to continue to reside in Fiji.

Part 5 – MULTIPLE CITIZENSHIP

Effect of possession of another citizenship on application for citizenship

14. A person who possesses or has acquired the citizenship of one or more other countries is not restricted in applying for and being granted citizenship either by registration or by naturalisation solely by virtue of possessing or having acquired the citizenship of one or more other countries.

Part 6 – RENUNCIATION OF CITIZENSHIP

Conditions to be satisfied for renunciation

15. A person may renounce his or her citizenship only if he or she:

- (a) has reached the age of 18; and
- (b) has been since birth a citizen of another country or has acquired the citizenship of another country by registration or naturalisation.

Declaration of renunciation

16.—(1) A person who satisfies the conditions prescribed by section 15 and who desires to renounce his or her citizenship must do so by making a written declaration in the form set out in Schedule 2.

(2) A person who executes a declaration of renunciation of citizenship must notify the Minister forthwith and supply a copy of the declaration with the notice.

(3) Upon receiving the notice the Minister shall register the person's renunciation of citizenship in the register kept for that purpose under section 20.

(4) A declaration under this section has effect from the date of its registration.

(5) Upon registration of a declaration made under this section a person who holds—

(a) a Fiji passport or emergency travel document of current validity;

(b) a certificate of registration or naturalisation,

must, upon being required to do so by the Minister by notice in writing, surrender any such document for cancellation.

(6) A person who fails or refuses, without reasonable excuse, to comply with a notice under subsection (5) commits an offence and is liable on conviction to a fine of \$1,000.

Part 7—DEPRIVATION OF CITIZENSHIP

Deprivation of citizenship

17.—(1) A person who became a citizen by registration or naturalisation ceases to be a citizen if he or she is deprived of citizenship by order of the Minister made under this section.

(2) Subject to this section, the Minister may by order deprive of his or her citizenship a person who became a citizen by registration or naturalisation if the Minister is satisfied—

(a) that the citizenship was obtained by fraud, misrepresentation or the concealment of a material fact; or

(b) that the person has done anything, or is associated with or involved in any activity, which is incompatible with the oath or affirmation of allegiance taken by that person pursuant to either section 10(1)(b) or 13(1)(b).

(3) Before making an order under subsection (2) the Minister must give to the person concerned a notice in writing informing him or her of the reasons why the Minister proposes to make the order and requesting the person to show cause why the order should not be made.

(4) If, within a reasonable time after receipt of a notice under subsection (3), the person concerned fails to satisfy the Minister that an order under subsection (2) should not be made, the Minister may make the order.

(5) A person in respect of whom an order is made under subsection (2) ceases to be a citizen of Fiji—

(a) on the date on which the order is made; or

(b) if an appeal is made under section 21 and dismissed, on the date on which the order is confirmed.

and the Minister shall forthwith register the person's deprivation of citizenship in the register kept for that purpose under section 20.

(6) A person in respect of whom an order of deprivation of citizenship has been made and duly registered must, upon being required to do so by the Minister by notice in writing, surrender for cancellation any Fiji passport or emergency travel document of current validity and any certificate of registration or naturalisation which he or she holds.

(7) A person who fails or refuses, without reasonable cause, to comply with a notice under subsection (6) commits an offence and is liable on conviction to a fine of \$1,000.

Part 8—RIGHTS TO ENTER AND RESIDE IN FIJI

Rights of certain non-citizens to enter and reside in Fiji

18. Provided that they comply with any conditions prescribed by or under the Immigration Act 2003 and any other written law governing entry and residence the following persons may enter and reside in Fiji:

- (a) former citizens;
- (b) a foreign wife or widow or foreign husband or widower of a citizen;
- (c) a child of a citizen.

Part 9—PREVENTION OF STATELESSNESS

Prevention of statelessness

19. For the avoidance of doubt:

- (a) a person born in Fiji in the period that began on 28 September 1987 and ended on 24 July 1990 is to taken to have become a citizen on the date of birth;
- (b) a person born outside Fiji in the period that began on 28 September 1987 and ended on 6 October 1987 is taken to have become a citizen on the date of birth if his or her father was a citizen on that date and was not himself born outside Fiji; and
- (c) a person born in Fiji in the period that began on 25 July 1990 and ended with the commencement date of this Decree is taken to have become a citizen on the date of birth if he or she would otherwise be stateless.

Part 10—REGISTERS

Registers

20. The Secretary must keep and maintain in such manner as the Minister approves—

- (a) a register of persons who have become citizens of Fiji by registration;
- (b) a register of persons who have become citizens of Fiji by naturalisation;
- (c) a register of persons who have renounced their citizenship of Fiji; and
- (d) a register of persons who have been deprived of their citizenship if Fiji.

Part 11—APPEALS

Citizenship Appeals Tribunal

21.—(1) A person aggrieved by a decision of the Minister under section 8(9), 10, 13 or 17 may, within 14 days of being notified of the decision, appeal to the Citizenship Appeals Tribunal established under subsection (2) (in this section referred to as “the Tribunal”).

(2) The Tribunal consists of a Chairman and 2 other persons appointed by the Chief Justice.

(3) The Chairman of the Tribunal must be qualified for appointment as a judge in accordance with section 15 of the Administration of Justice Decree 2009 (Decree No. 9).

(4) The Tribunal, in accordance with rules of procedure made by the Tribunal and approved by the Chief Justice, must hear and determine any appeal under this Decree brought before it in accordance with those rules.

(5) The Tribunal may, upon appeal, confirm, review or vary the decision appealed against and may order the payment of such costs as it thinks fit.

Part 12—TRANSITIONAL

Transitional provision for certain permanent residents

22. Any person, being a citizen of another country but formerly a citizen of Fiji, who is entitled to be registered as a citizen of the State by virtue of section 8(6), and who has applied for or has been granted the status of permanent resident pursuant to Regulation 51(2) of the Immigration Regulations 2007 made under the Immigration Act 2003, who applies for registration as a citizen under section 9 shall not be required to pay the prescribed fee for making such application.

Part 13—MISCELLANEOUS

Residence in Fiji

23. For the purposes of determining whether an applicant for citizenship under Part 3 or Part 4 has been lawfully present in Fiji for a given period—

- (a) the Minister must not take into account any period during which the applicant—
 - (i) was confined in prison;
 - (ii) was confined in a psychiatric institution by order of a court made in connection with criminal proceedings against the applicant;
 - (iii) was present in Fiji pursuant to a visitor's permit issued under the Immigration Act 2003; and
 - (iv) was a student undertaking studies or training in Fiji;
- (b) the Minister may, in his or her discretion, treat a period during which the applicant—
 - (i) was a resident of Fiji;
 - (ii) was not present in Fiji; and
 - (iii) was engaged in activities that the Minister considers beneficial to the interests of the State,

as a period during which the applicant was lawfully present in Fiji.

Evidence

24.—(1) A document purporting to be a notice, certificate, order, authority or declaration, or an entry in a register, or an oath or affirmation of allegiance, given, issued or made under this Decree must be received in evidence and, unless the contrary is proved, must be taken to have been given, issued or made by or on behalf of the person by or on whose behalf it purports to have been given, issued or made.

- (2) An entry in a register made under this Decree is *prima facie* evidence of the matters stated in the entry.

Offences

25. A person who, pursuant to this Decree, makes a statement that is, to his or her knowledge, false or misleading in a material particular, commits an offence and is liable on conviction to a fine of \$10,000 or to imprisonment for five (5) years.

Delegation

26. The Minister may, in writing, delegate to a public officer all or any of the Minister's powers under this Decree or the regulations save that the power to make regulations under section 27 may only be delegated to the Director of Immigration.

Regulations

27.—(1) The Minister may make regulations, not inconsistent with this Decree, prescribing all matters that are required or permitted by this Decree to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Decree and, in particular, prescribing fees for the purposes of this Decree.

- (2) Regulations made under this section may empower the Minister to waive a fee either generally or in a particular case.

SCHEDULE 1*Oath of Allegiance*

I, A.B , do swear that I will be faithful and bear true allegiance to the Republic of Fiji, according to law. So help me God!

I, A.B , do solemnly, sincerely and truly declare and affirm that I will be faithful and bear true allegiance to the Republic of Fiji, according to law.

SCHEDULE 2

DECLARATION OF RENUNCIATION OF CITIZENSHIP OF FIJI

1. I, of

 am of full age and capacity and was born on

2. I am a citizen of the Republic of Fiji because

3. I am a national/citizen of under the law of that country because

4. I hereby renounce my citizenship of the Republic of Fiji.

I, solemnly and sincerely declare that the particulars stated in this declaration are true, and I make this solemn declaration conscientiously believing those particulars to be true and by virtue of the Statutory Declarations Act.

Declared at on

.....
 before me and I certify that the declaration was read
 over in the language to the
 declarant who appeared fully to understand its meaning:

.....
 (Office held or nature of appointment)

GIVEN under my hand this 6th day of July 2009.

JOSEFA ILOILOVATU ULUIVADA
 President and Commander in Chief
 of the Republic of the Fiji Military Forces