

1955

*Present : Gratiaen J.*

ABDUL CADER, Appellant, and COMMISSIONER FOR  
REGISTRATION OF INDIAN AND PAKISTANI  
RESIDENTS, Respondent

*S. C. 368—Appeal under section 15 of the Indian and Pakistani  
Residents (Citizenship) Act, No. 3 of 1949*

*Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Section 6 (2) (1)—  
“ Assured income ”—Proof.*

Documentary evidence is not the only method of establishing an assured income within the meaning of section 6 (2) (1) of the Indian and Pakistani Residents (Citizenship) Act.

**A**PPEAL against an order made under the Indian and Pakistani Residents (Citizenship) Act.

*C. Shanmuganayagam*, for the applicant appellant.

*V. Tennekoon*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

July 21, 1955. GRATIAEN J.—

This is an appeal against an order refusing to register the applicant, his wife and their minor children as citizens of Ceylon under the provisions of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949.

The appellant is an Indian Moor. He was born in India but was brought over to Ceylon by his parents about 40 years ago when he was a young lad, and he has since settled in this country. He married in India in 1935 when he was on a visit to that country, and his wife accompanied him to Ceylon shortly afterwards. Their children, one of whom was born in 1942, and the other in 1945, attend school in Colombo where the family has resided for many years.

The Deputy Commissioner has not rejected the evidence that the appellant and his wife possess the necessary residential qualifications for registration, but the application was refused solely on the ground that

the appellant had failed to satisfy the following requirement laid down in section 6 (2) (1) of the Act :—

“ that the applicant is possessed of an assured income of a reasonable amount or has some suitable business or employment or other lawful means of livelihood to support the applicant and the applicant's dependants, if any. ”

On this issue the evidence led at the inquiry was all one way. According to the appellant, who was corroborated by other witnesses, he is well established as a dealer in hair oil and similar commodities which he sells as a “ hawker ” in the city of Colombo. His daily sales average Rs. 25 to Rs. 30, and his monthly profits amount to Rs. 175 to Rs. 150 a month. He also earns a small subsidiary income as a Radio artiste.

“ Hawkers ” do not generally appear to keep regular books of account, and the appellant, not being an exception to the rule in this respect, could not satisfy the Department's obsession for “ documentary proof ” which is regarded as the only kind of acceptable evidence of any fact which must be established under the Act. For this reason, the application was rejected. But there was plenty of evidence placed before the investigating officer at the preliminary investigation, and later before the Deputy Commissioner himself, which supported the appellant's case. For instance, he produced receipts which show that for a number of years he has regularly paid Rs. 13·58 (later reduced by law to Rs. 12·58) each month as the rental for the dwelling-house in which he and his family reside. This is surely some indication of a regular source of income. Moreover, there is evidence that he maintains his family in reasonable comfort. He sends his children regularly to school, and the investigating officer has apparently failed to discover any evidence from which one could infer that the appellant and his family had ever been in financial difficulties. Finally, the appellant produced before the investigating officer a certificate from a Member of Parliament (now a responsible Cabinet Minister) who stated that he had known the family for “ the past fifteen years ” and considered them fit and proper persons for being granted the privilege of Ceylon citizenship.

Section 6 (2) of the Act requires a reasonable guarantee that the newly admitted citizen and his family will not become a burden on the State. He must therefore establish that he possesses a sufficient income (earned or unearned) to support himself and his dependants, and that there are fair grounds for assuming that he will continue to do so. If the uncontradicted evidence of the appellant and his witnesses be true, the statutory test has been satisfied. His source of income is not very exciting, but it is not unlawful. The past history of his business proves that it is reasonably lucrative, and his anxiety to continue to carry it on is in itself a fair indication of his own confidence in his future prospects. I hold, on the material before me, that a *prima facie* case for registration has been made out, and I direct the Commissioner to take action accordingly on that basis. The appellant is entitled to his costs which I fix at Rs. 105.

The machinery of the Act would work far more satisfactorily, I am sure, if the functions of investigating officers under section 8 (2) are

performed with more imagination. In the past, the exploded departmental theory that nothing but documentary proof suffices as "*prima facie* proof" of any fact has induced them to concentrate too much on searching for loopholes in the documents produced before them by a particular applicant. Better results would be achieved, for instance, by making independent inquiries from his neighbours or alleged business associates as to the truth or falsehood of a man's claim to have resided and carried on business in a particular locality for a long period of time, or to be engaged in carrying on a fairly lucrative trade in the city of Colombo. The failure of an investigating officer to discover rebutting evidence on these lines is itself a point in favour of the appellant's case.

*Appeal allowed.*

---