



Administrative
Appeals Tribunal

DECISION AND
REASONS FOR DECISION

Division: GENERAL DIVISION

File Number(s): **2022/7215**

Re: **Gaurav Arora**

APPLICANT

And **Minister for Immigration, Citizenship and Multicultural Affairs**

RESPONDENT

DECISION

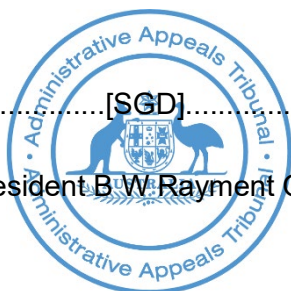
Tribunal: **Deputy President B W Rayment OAM KC**

Date: **10 May 2023**

Place: **Sydney**

The reviewable decision is set aside and the matter is remitted to the respondent for reconsideration with the direction that the applicant meets the requirement in subsection 21(2)(h) of the *Australian Citizenship Act 2007* (Cth).

Deputy President B W Rayment OAM KC



[SGD]

CATCHWORDS

CITIZENSHIP – application for citizenship by conferral – whether the applicant is of good character pursuant to s 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – decision under review set aside and remitted

LEGISLATION

Australian Citizenship Act 2007 (Cth)

Criminal Code Act 1995 (Cth)

SECONDARY MATERIALS

Citizenship Procedural Instruction 15

REASONS FOR DECISION

Deputy President B W Rayment OAM KC

10 May 2023

1. The applicant seeks citizenship by conferral, and the delegate decided that the applicant was not of good character so that his application was refused under s 21(2)(h) of the *Australian Citizenship Act 2007* (the Act). Section 21(2)(h), like other subsections of s 21, prescribes that the Minister must be satisfied that the applicant is of good character at the time of the Minister's decision of the application.
2. In deciding whether the decision of the delegate of the Minister made the correct or preferable decision as to character, the Tribunal's duty is to decide whether it is satisfied that at the time of its decision the applicant is of good character.
3. Relevant to that evaluative determination of the Tribunal in this case is the fact that the applicant was convicted of two serious offences mentioned below, any remorse he has shown, whether the applicant has been rehabilitated, whether there is any likelihood of recidivism, and his personal circumstances up to the date of these reasons.

4. The applicant has two convictions, both being old convictions. The first offence was the subject of a conviction nineteen years ago. There is limited evidence before the Tribunal about the offence, other than from the applicant himself. The s 37 documents include no remarks on sentence.
5. The applicant was apparently charged with making a false statement, involving the issue to him of a passport on the false basis that he was born in Australia. The applicant said that he signed blank papers at the request of his migration agent, and was later told that he was a permanent resident and presented with an Australian passport. He paid \$9000 for the services of the migration agent. He said that when he tried to use the passport he was told by police that a false birth certificate was used to obtain the passport. The birth certificate showed that he had been born in Australia, whereas in fact he was born in India. In the local court, he was sentenced to nine months imprisonment, but released upon signing a recognizance to be of good behaviour for nine months. At the time of his conviction he was aged in his twenties. He says that he cooperated with the authorities.
6. The local court seems to have accepted that he may have acted in good faith, and to have dealt with him leniently. The offence is, of course, a long time ago.
7. The second offence involves events of some 14-15 years ago. The applicant made a series of successful bets on racecourses, and sent amounts out of the country in amounts not exceeding \$10,000 to his own account, or accounts of his Indian parents. He was not charged with any offence relating to the betting transactions but was charged with money laundering offences. He was dealt with in the District Court and was ordered to be imprisoned for 6 years and nine months with a non-parole period of 3 years and nine months. The offence was dealing with over \$1,000,000 intending that the money be an instrument of crime, contrary to s 400.3(1) of the *Criminal Code Act 1995*. There was no tax liability on the winnings of the applicant, and the fact of winning large sums at racecourses was proved.
8. The applicant seems to have relied upon tips given to him by other race patrons. When asked whether he suspected that race fixing had occurred he replied "definitely".

9. The applicant admitted that prior to his incarceration he took drugs including cannabis and cocaine, but said that, since he was released from gaol, he has not taken any drugs. The District Court judge noted that the sentence imposed did not relate to any drug offence.
10. The applicant was released from prison late in the year 2013.
11. He married in the year 2009 and has four daughters of his own and a step-son. Since his offending (which ended 14-15 years ago) he has on the evidence been a good father and husband.
12. He attends several churches regularly and is a convinced Christian. Fellow churchgoers describe him as trustworthy, and as a loving and committed family man.
13. Some 28 persons have made statutory declarations included in the Tribunal documents which speak very well of the applicant and, taken together, persuade me that he is of good character at this time. He does charity work and provides social and emotional support for persons in need. As a volunteer he works with the Man Up organisation, which helps those on parole to obtain jobs, rental accommodation, food and clothing. Most of the referees state that they are aware of his criminal record and regard him as a changed man. Each of those persons regards the applicant as having been rehabilitated.
14. There is reason to think that during the applicant's term of imprisonment, he became determined to reform himself. The notes by corrective services concerning the applicant show that his conduct was uniformly good. His conduct since he was released from gaol has been exemplary, as appears from the statutory declarations included in the Tribunal documents.
15. I have considered the terms of the Citizenship Procedural Instruction 15. Nothing contained in that instruction causes me to doubt that at this date the applicant is of good character.
16. Therefore the reviewable decision is set aside and the matter is remitted to the respondent for reconsideration with the direction that the applicant meets the requirement in subsection 21(2)(h) of the Act.

*I certify that the preceding 16
(sixteen) paragraphs are a
true copy of the reasons for
the decision herein of*

.....[SGD].....

Associate

Dated: 10 May 2023

Date(s) of hearing:	28 March 2023
Counsel for the Applicant:	Dr J Donnelly
Solicitors for the Applicant:	Astor Legal
Solicitors for the Respondent:	HWL Ebsworth Lawyers