

1956 *Present* : H. N. G. Fernando, J., and T. S. Fernando, J.

S. KUMARASAMY, Appellant, and COMMISSIONER FOR
REGISTRATION OF INDIAN AND PAKISTANI
RESIDENTS, Respondent

*S. C. 122—In the Matter of an Application under the Indian and
Pakistani Residents (Citizenship) Act, No. 3 of 1949*

*Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Application for
citizenship thereunder—Proof of residence of children.*

In an application for citizenship under the Indian and Pakistani Residents (Citizenship) Act, proof of a mother's continuous residence in Ceylon during a period in which children were born to her raises a very strong inference that the children, while of tender age, were cared for by their mother in a home provided by their father.

APPEAL from an order of the Commissioner for Registration of Indian and Pakistani Residents.

S. P. Amarasingham, for the applicant-appellant.

Walter Jayawardene, for the respondent.

Cur. adv. vult.

June 13, 1956. H. N. G. FERNANDO, J.—

The only reason why the Deputy Commissioner has refused this application is that he was "unable to hold" that the applicant's daughter Ambujan had been in Ceylon during two periods :—(1) September, 1941, to April, 1944, and (2) October, 1947, to May, 1949. It was proved that Ambujan was born in Ceylon in 1936 and was admitted to an estate school in April, 1944, and the first of the periods referred to was accordingly one during which Ambujan was between 5 and 8 years of age. It was also proved that a second child of the marriage was born in Ceylon

in December, 1939, and that the third child was born in Ceylon in April, 1942. In regard to the two younger children the Deputy Commissioner has apparently accepted the evidence that they remained in Ceylon from the time of their birth onwards; and in regard to the mother he was apparently satisfied that she remained continuously in Ceylon from 1939 onwards. This evidence raises a strong inference that the eldest child Ambujan, who was only 3 years of age in 1939, also remained in Ceylon with her parents. The parents and the younger children having been in Ceylon during the whole of the first mentioned period, it was most unlikely that Ambujan would have been separated from her family before she commenced to attend school. I think therefore that there was no reason why the Deputy Commissioner should have rejected the evidence of the applicant that Ambujan did not leave Ceylon after the time of her birth and prior to her entry into school.

Ambujan left school in September, 1947, at the age of 11 years and the Check Roll register shows that she was employed on an estate from May, 1949. Here again the Deputy Commissioner was satisfied that during the interval the mother and the other children had continued to be ordinarily resident in Ceylon. That being so, there was little or no reason to disbelieve the applicant's evidence that Ambujan who was then quite a young girl, was also in Ceylon during that time.

I would like to take this opportunity to point out that in cases where there is proof of a mother's continuous residence in Ceylon during a period in which children were born to her, the circumstances raise a very strong inference that the children, while of tender age, would have been cared for by their mother in a home provided by their father. Hence, when oral evidence is tendered in proof of what might be legitimately inferred from the circumstances, the evidence should not be rejected merely because an applicant is unable to adduce documentary evidence in addition.

The appeal is allowed with costs fixed at Rs. 105, and the Deputy Commissioner is directed to take the further steps necessary under the Act on the footing that a prima facie case for the registration of the applicant and his dependants has been made out.

T. S. FERNANDO, J.—I agree.

Appeal allowed.
