



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No.14338/2024

Seher Gogia (DOB 1st June 2020) D/o Shri Saurabh Gogia (Minor) Through Father Shri Saurab Gogia S/o Shri Subodh Gogia, Aged 38 Years, R/o Plot No. 5, Civil Lines, Tonk At Present R/o D-6, Alishan Flats, Bhagat Singh Marg, Tilak Nagar, Jaipur.

-----Petitioner

Versus

1. The Foreigners Regional Registration Officer, Frro Delhi, Bureau Of Immigration, Ministry Of Home Affairs, 2, East Block-VIII, Level-V, Sector-1, Rama Krishna Puran, New Delhi-110066.
2. Smt. Sangya Jain W/o Shri Saurabh Gogia D/o Shri Sanjay Kumar Jain, Aged About 34 Years, R/o 242, Harnamdas Road, Civil Lines, Meerut (UP)

-----Respondents

For Petitioner(s)	:	Mr. Rajesh KUMar Sharma Ms. Kamini Pareek Mr. Sarthak Chaubey
For Respondent(s)	:	Mr. Devesh Yadav

JUSTICE ANOOP KUMAR DHAND

Order

31/07/2025

Reportable

1. Traveling and going abroad for employment or studies has become increasingly common and for some have it has even become a hobby. Many people have lofty goal to travel and explore all parts of the world. However, pregnant women face greater challenges when traveling to foreign countries. There are cases of babies being born during a temporary stay abroad. This raises an important question regarding nationality of children



born, while their mothers are temporarily residing in a foreign country.

2. Children born to Indian citizens outside India often face great challenges relating to citizenship. Such children automatically acquire the citizenship of the country where they are born, however, they encounter difficulties when their Indian parents return and decide to reside in India. Under these circumstances, these children are classified as "Non-Resident Indian" (NRIs). This raise important questions viz., Whether children born abroad to Indian citizens can acquire Indian citizenship or not; and Whether they need to extend their Visas to stay in India; and Whether they are entitled to get Overseas Citizenship of India Card or not. All these issues form the core of the instant writ petition submitted on behalf of a five-year old minor, an Australian Citizen by birth, whose parents are Indian Citizens.

3. The instant writ petition has been filed by the petitioner with the following prayer:-

"a) By an appropriate order and direction the respondents may kindly be directed to issue extension of Visa to the petitioner and looking to the all circumstances of the parents issue Overseas Citizenship of India Card to the petitioner as per the law.

b) By an appropriate writ order and directions the respondent No.2 may be directed to provide NOC immediately for Visa Extension of the petitioner.

c) Any other order or direction which this Hon'ble Court may deem fit and proper, be also passed in favour of the petitioner."



4. By way of filing this writ petition, the petitioner seeks directions against the respondent No.1 for extension of the petitioner's Visa, who is a minor girl aged five years. Additionally, the petitioner also seeks directions against the respondent No.1 for issuance of an Overseas Citizenship of India Card to the petitioner in accordance with law.

5. Learned counsel for the petitioner submits that the petitioner's parents are Indian citizens, who solemnized their marriage on 19.03.2018. Learned counsel submits that after their marriage they visited Australia, where the petitioner was born on 01.06.2020 out from their wedlock. Learned counsel submits that the Commonwealth of Australia has issued Australian Citizenship to the petitioner on 22.11.2021. Learned counsel submits that subsequently, the petitioner along-with her parents arrived in India on the Visa issued by the Union of India. Learned counsel submits that initial Visa was valid from 19.08.2022 to 18.08.2023 and was subsequently extended till 24.01.2024. Learned counsel further submits that in the meantime, matrimonial dispute arose between the petitioner's parents and the petitioner's mother has filed several cases, including criminal cases, against the petitioner's father.

6. Learned counsel for the petitioner submits that the petitioner's father submitted an application before the respondent No.1 seeking extension of term of petitioner's Visa, however, the said application came to be rejected on the ground that the petitioner's mother has not provided No Objection Certificate (NOC) for the extension of petitioner's Visa. Learned counsel further submits that, under these circumstances, the petitioner





apprehends that she would be treated & classified as an illegal migrant and may be denied the right to reside within the territory of India without a valid Visa. Hence, under these circumstances, interference of this Court is warranted.



7. In support of his submissions, learned counsel for the petitioner has placed reliance upon the judgment passed by the Madras High Court in the case of **Ramya Versus The Foreigners Regional Registration Officer & Another** while deciding **W.P. (MD) No.5478/2024**.

8. *Per contra*, learned counsel for the respondent No.1 opposed the arguments advanced by petitioner's counsel and submitted that till date no application has been submitted by the petitioner through her parents for issuance of Overseas Citizenship of India Card, therefore, no orders can be passed in this regard without a formal application. He further submits that as per the instructions received from the respondent-Department, the respondent-Department will neither deport the minor nor take any coercive action against her. Hence, the writ petition being misconceived is liable to be rejected.

9. Learned counsel for the respondent No.1 further submits that the petitioner is not an Indian Citizen but she is a foreign national and a resident of Australia, therefore, she is not entitled to reside in India. In support of his submissions, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Louis De Raedt Versus Union of India & Others** reported in **1991 (3) SCC 554**. Learned counsel submits that, under these circumstances, the instant writ petition is liable to be rejected.



10. Heard and considered the submissions made at the Bar and perused the material available on record.

11. Perusal of the record indicates that the petitioner's parents are Indian citizens and not foreign nationals. They solemnized their marriage in India on 19.03.2018 and subsequently, traveled abroad, i.e., Australia for employment. The petitioner was born there on 01.06.2020 and as a result thereof, she acquired Australia citizenship and the Commonwealth of Australia issued a citizenship certificate to the petitioner on 22.11.2021.

12. This fact is also not in dispute that when the petitioner's parents traveled to India to visit their native place, the petitioner accompanied them on the Visa issued by the Foreigners Registration Office for a specified period and after expiry of the said period, the Visa was further extended. In the meantime, matrimonial disputes arose between the petitioner's parents, and as a result thereof, the relationship of the petitioner's parents has become strained and they have started residing separately. As per the pleadings in the writ petition, the petitioner has been residing with her father since birth and the petitioner's mother has neither filed any application before any competent court of law seeking the petitioner's custody nor any custody order has been passed in her favour. Therefore, there appears no dispute regarding custody of the petitioner.

13. Now, the question remains for consideration of this Court is whether the petitioner's visa can be extended for further period or not, simply on the ground that the petitioner's mother has refused to provide her NOC before the Foreigners Registration Office for extension of visa of the petitioner.



14. The petitioner is a five year old minor and her parents are Indian Nationals. Under these circumstances, the petitioner cannot be left at the sole mercy/discretion of her mother. In case, the petitioner's visa is not extended, she would be of treated as an illegal migrant and may face deportation in due course of time.

15. Best interest of the child is the paramount consideration for all the Nations. The Government of India has acceded on 11.12.1992 to the United Nation Convention on the Rights of the Child, 1989 (for short, 'the UNCRC'), adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child. Articles 3, 5 & 9 of the UNCRC are relevant in this regard which read as under:-

"Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent



authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence."

16. Hon'ble the Apex Court in the case of **Union of India Vs. Agricas LLP** reported in **(2021) 14 SCC 341** & **Apparel Export Promotion Council vs. A.K.Chopra** reported in **(1999) 1 SCC 759** has held that principles of International Law will be respected and enforced so long as they are not in conflict with Indian laws.





Article 9 of the UNCRC explicitly mandates that a child should not be separated from the parents. Deporting the petitioner back to Australia without ascertaining her wishes would not be in her best interest and would constitute a clear breach of Article 9 of the Convention.



17. This Court is primarily concerned with the welfare of the petitioner, a girl child aged around five years. At present, she is residing with her father and her Indian citizen parents do not wish to return to Australia. Therefore, the petitioner being a 5 year old minor cannot be compelled to be deported to Australia. The right against such deportation is protected under Article 21 of the Constitution of India especially when considered along with the provisions of the UNCRC.

18. It is true that foreigners enjoy certain fundamental rights under the Constitution of India, including the right to life and personal liberty guaranteed under Article, however, these rights do not extend to the right to reside or settle in the country.

But, the present case is unique and peculiar, where the petitioner's parents are Indian citizens currently residing in India. After their marriage, they went to Australia for employment, where the petitioner was born and consequently acquired Australian citizenship. After residing in Australia for some time, they returned to India in the month August 2022, bringing the petitioner with them when she was two years old, on a Visa valid from 19.08.2022 to 18.08.2023. Subsequently, the petitioner's Visa was extended til 24.01.2024. Matrimonial disputes have arisen between the parents and the petitioner's mother has filed a criminal case against the petitioner's father under Section 125



CrPC and under Section 12 of the Domestic Violence Act, 2005. She also filed an application under Section 7 of the Guardianship and Wards Act, 1890, seeking custody of the petitioner, which was later on withdrawn by her from the Family Court. Thereafter, the petitioner's mother lodged an FIR against the petitioner's father and other family members. Now, the relationship between the petitioner's parents has become strained and the petitioner's mother has refused to give her consent for extension of the Visa period of the petitioner. Now, the father is unable to return to Australia and the petitioner cannot reside with her father in India only because she holds Australian citizenship. This unique situation requires resolution by the respondents in accordance with the provisions of the Constitution of India and other relevant laws in this regard. If any application is submitted by the father of the minor petitioner for issuance of the Overseas Citizen of India Card, then same would be considered sympathetically by the respondents.

19. Section 4 of the Citizenship Act, 1955 (for short "the Act of 1955") deals with the provision of citizenship by descent. Under this provision, a child born outside India to the Indian Citizen may acquire citizenship by descent. The Ministry of Home Affairs has clarified that parents of such child can apply for registration of the child's birth at the Indian Consulate, as per the provisions and procedure established and the final decision would be taken by the Government. Furthermore, Rule 3 of the Citizenship Rules, 2009 provides that a person may submit an application for registration of birth of his/her minor child born outside India in terms of sub-section (1) of Section 4 of the Act of 1955 in Form-I to the Indian





Consulate in the country, where such child was born, together with a declaration that the child does not hold the passport/citizenship of any other country.

Ministry of Home Affairs, Government of India who administers the matters related to citizenship has made online registration of births mandatory for all the children born abroad. Accordingly, the birth of every such child is required to be registered with the Embassy of India within the time prescribed.

20. Considering the overall facts and circumstances of the case, the instant writ petition stands disposed of with a direction to the respondent No.1 to extend the petitioner's Visa for the maximum period, prescribed under the law, without insisting on the production of NOC from the petitioner's mother.

21. In the meantime, the petitioner, through her father, may submit an application before the respondent No.1 for issuance of Overseas Citizenship of India Card. If such an application is submitted, by the petitioner through her father, it is expected that the respondent No.1 shall consider and decide the same sympathetically, in accordance with law, expeditiously as early as possible, preferably within a period of three months from the date of filing of application.

22. Stay application as well as all applications (pending, if any) also stand disposed of.

23. Before parting with this order, this Court deems it just and proper to observe that the Ministry of Home Affairs, Government of India is expected to look into the pathways to secure the best interest of such children born abroad from the wedlock of Indian citizen parents and revisit the provisions of laws related to the





issue, and if deemed necessary, make necessary amendments in the relevant laws to address the unique situations such as the one involved in this writ petition in the best interest and paramount consideration of the welfare of minor children born abroad to Indian citizen parents.

The United Nations and its primary agency for children's welfare i.e. UNICEF both work to protect and promote Child Rights by providing humanitarian and developmental assistance worldwide. They operate in over 190 countries and territories focusing on areas such as health, nutrition, education and protection of children. The UNICEF is dedicated to ensure that every child has the opportunity to survive, thrive and reach their full potential.

This Court feels that looking to the welfare and best interest of such children, the international legal framework must be revisited inasmuch as it is the need of the hour to call for the action for the countries to enhance cooperation and harmonize legal standards to better protect children. Therefore, in the light above discussion, this Court feels that a robust and flexible convention is required to address these unique circumstances while ensuring that the Child's Welfare remains the paramount consideration.

(ANOOP KUMAR DHAND),J

Karan/267