

(2018) 09 DEL CK 0300

In the Delhi High Court

Case No : Civil Writ Petition No.10015 Of 2018

Natalya Mamrenko

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Citizenship Act, 1955 — Section 7A, 7D, 7D(f)

Citation : (2018) 09 DEL CK 0300

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

VIBHU BAKHRU, J

C.M. No. 39014/2018

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

W.P.(C) 10015/2018

3. Issue notice. The learned counsel appearing for the respondent accepts notice. The petition is taken up for final hearing.

4. The petitioner has filed the present petition, inter alia, praying as under:-

â??(i) Direct the respondents to issue OCI card to the petitioner in lieu of her (PIO) â??Persons of Indian Originâ?? Card No. P-0563644 which is valid upto 21.11.2026.â??

5. The petitioner is a citizen of Uzbekistan and claims that she is married to Mr Krishan Mohan Lal Nayyar. She claims that the marriage was

solemnised at Arya Samaj Mandir, Malviya Nagar, New Delhi as per Hindu rites on

30.05.2006. The petitioner and her husband were blessed with two children who are now aged about 10 and 12 years respectively. There is no dispute that both the children are Indian citizens and hold Indian passports. The petitioner states that she has been living in her matrimonial home along with her parents-in-law since the day of her marriage. It is also asserted that she is taking care of her father-in-law who is more than 82 years of age. However, the petitioner's mother-in-law was ailing and has since expired. She states that her husband Krishan Mohan Lal Nayyar no longer lives with her and she does not know his whereabouts. It is also asserted that her husband does not visit his ailing father (the petitioner's father-in-law).

6. The petitioner was issued a Persons of India Origin (PIO) Card No. P0563644 on 22.11.2011 by the FRRO, New Delhi. The said card was valid

for a period of fifteen years; that is upto 21.11.2026. The Government of India withdrew the PIO Card Scheme by a notification dated 09.01.2015.

The PIO card has now been replaced by creating a category "Overseas Citizens of India (OCI)" with the statutory amendments being

introduced in the Citizenship Act, 1955. By a Circular dated 15/16.01.2015 all FRROs have been informed that PIO cards are deemed to be OCI

cards. The PIO Card holders are now entitled to be considered as Overseas Citizens of India if they qualify the criteria as set out in Section 7A of the

Citizenship Act, 1955 as amended by The Citizenship (Amendment) Act, 2015.

7. In the aforesaid context the petitioner applied for an OCI Card. Her grievance is that her application has not been processed as yet and this has led

her to approach this Court.

8. Mr Jaspreet Singh learned counsel who appears on advance notice states on instructions that the only reason why the petitioner's application

has not been processed as yet is that the whereabouts of her spouse have not been ascertained. He also has referred to the provisions of Section

7D(f) of the Citizenship Act, 1955 which reads as under:-

7D. Cancellation of Registration as Overseas Citizens of India Cardholder."The Central Government may, by order, cancel the registration

granted under sub-section (1) of section 7A, if it is satisfied that

xxxx xxxx xxxx

(f) the marriage of an Overseas Citizen of India Cardholder, who has obtained such Card under clause (d) of sub-section (1) of section 7A, -

(i) has been dissolved by a competent court of law or otherwise; or

(ii) has not been dissolved but, during the subsistence of such marriage, he has solemnised marriage with any other person.â??

He states that enquiries are still being held to ascertain whether the petitioner would be disentitled to an OCI Card in terms of Clause (f) of Section

7D of the Citizenship Act, 1955.

9. I have heard the learned counsel for the parties.

10. There is no dispute that both the children of the petitioner were born in India and are Indian citizens. Concededly, there is also no material available

with the respondents that would lead them to disbelieve the statements made in the present petition. It is also not disputed that all persons who were

issued PIO Cards would also qualify for being issued OCI Cards under Section 7A of the Citizenship Act, 1955.

11. In so far as the reference to clause (f) of section 7D of the Citizenship Act, 1955 is concerned, the same is clearly inapplicable in the facts of the

present case. There is no material on record to show that the petitionerâ??s marriage with her husband is dissolved by a decree of divorce from a

Court of competent jurisdiction or otherwise. There is also no material on record to show that the petitioner has solemnised a marriage with any other

person. In the circumstances, this Court is of the view that the petitionerâ??s application for an OCI Card cannot be denied. The respondents are,

accordingly, directed to process the same and issue an OCI Card to the petitioner as expeditiously as possible and preferably within a period of one

month from today.

12. Having stated the above, it is also necessary to observe that the respondents are not precluded from continuing their investigations or inquiries to

ascertain the current status of the petitioner/her husband. In the event, the respondents find any material which satisfies them that the provisions of

Clause (f) of Section 7D are applicable, they are not precluded from cancelling the OCI Card, in accordance with law.

13. The petition is disposed of in the above terms.

14. Order dasti.