

(2022) 12 DEL CK 0069

In the Delhi High Court

Case No : Civil Writ Petition No. 4483 Of 2022, Civil Miscellaneous Application
No. 13362 Of 2022

Zhanna Lyan

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 09-12-2022

Acts Referred:

Citation : (2022) 12 DEL CK 0069

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Uday Bedi, Niharika Sharma, Nidhi Raman, Rupali Kapoor, Charu Modi, Zubin Singh

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. A peculiar situation arises in the present case. The Petitioner, who is a citizen of Russia, seeks cancellation of her exit permit and also seeks issuing of an entry (X-2) visa in accordance with notification no. 25022/62/2020-F-I dated 13th August, 2020.
3. The brief facts of the matter are that the Petitioner was born in Kiev, Ukraine in 1970 when it was part of the erstwhile Union of Soviet Socialist Republics (USSR). Later, she was issued a passport under Russian Federation nationality. She arrived in India in December, 2007 on the basis of the Russian passport and a tourist visa bearing no.AC776259 (DOI: 11th December, 2007, DOE: 10th June 2008).
4. It is her case that she got married to an Indian citizen under the Special Marriage Act, 1954. She had a child born out of the wedlock by the name Lucky Lyan who was born in Rohini, Delhi on 31st October, 2008. Later, she divorced

her husband by mutual consent under the Special Marriage Act, 1954 and the sole custody of the child was given to the Petitioner. The final decree of dissolution of marriage was also passed on 8th October, 2010.

"4. It is the grievance of the Petitioner that though her son was born in India, however, he was not issued an Indian passport which led to filing of W.P.(C) 6945/2019 in which, vide order dated 28th January, 2021, the Court had directed as under:

"4. Notice was issued in this petition on 2nd July, 2019. Mr. Rahul Sharma, Id. counsel has filed two affidavits - one on behalf of the RPO and another on behalf of the Foreigners Regional Registration Officer (hereinafter, 'FRRO'). In the affidavit filed on behalf of the RPO, the stand taken is that a police enquiry report was received that the mother of the Petitioner is a foreigner. Her passport had not been produced along with the visa and since she was considered to be an illegal migrant, the passport of the Petitioner i.e., her son, was not issued. However, thereafter, on 8th January, 2021, the FRRO concluded that the mother was not an illegal migrant on the date when the Petitioner was born i.e., on 31st October, 2008. In view thereof, the RPO now states that if the Petitioner makes a fresh application, the same shall be proceeded with in accordance with law and the Petitioner would be issued the passport. The said stand has also been reiterated by the FRRO.

5. In view of the stand taken by the RPO and the FRRO, the relief sought by the Petitioner stands answered and satisfied. The Petitioner may accordingly make an application to the RPO, in terms of the extant rules and guidelines, within two weeks. If the application is made in accordance with the prescribed procedure along with the necessary documents, the same shall be processed and the passport of the Petitioner shall be issued expeditiously and in any case within 30 days from the submission of the complete application by the Petitioner. "

5. The Court has been informed that pursuant to this order, the Petitioner's son has now been given an Indian passport. In the meantime, the Petitioner's visa expired in 2012 itself. However, she never applied for an extension of the visa during that period and application for visa extension was made only in March, 2021. On the contrary, while living in India, she transmitted her Russian passport to Russia and obtained an Indian business visa twice from the Indian Embassy in Russia. It is the submission of the Id. Counsel for the Respondents that whenever such a visa is issued from the embassy, then a corresponding arrival/ departure within the validity of such a visa is also mandatory. The conduct of the Petitioner is completely contrary to the Order 3B Foreigners Order 1948 which reads as under:

"Order 3B. Requirement of holding a valid passport or other valid travel document while living in India. - Save as otherwise provided in terms of this Order or Rule 4 of the Passport (Entry into India) Rules, 1950, a foreigner shall hold a valid passport or other valid travel document relating to passport, as the

case may be, while living in India.

Explanation. - For the purpose of this paragraph, "other valid travel document" includes emergency certificate or certificate of identity or such other document which has been issued by or under the authority of the Government of a foreign country satisfying the conditions specified in the Passport (Entry into India) Rules, 1950 as made under the Passport (Enter into India) Act, 1920 (34 of 1920)]"

6. As per the Respondents, the matter of the Petitioner was referred to the Bureau of Immigration. The Bureau has decided to deny the Petitioner visa extension service and issued her with a Leave India Notice. The Petitioner was further issued an exit permit along with a penalty of Rs.50,000/- for the visa violations committed by her. Ld. counsel for the Respondents submits that the exit permit has also come to an end on 6th March, 2022 and, thereafter, the Petitioner is staying illegally in India.

7. On the other hand, Id. Counsel for the Petitioner relies upon the notification no. 25022/62/2020 dated 13th August, 2020 issued by the Ministry of Home Affairs, Foreigners Division which provides for extension of stay on X-2 visa in case of foreigners who were married to Indian nationals but have been divorced, if the couple had a child whose custody is given to the foreigner. The relevant clause is set out below:

"(b) In case of divorce:

(i) If the couple had a child whose custody has been given to the foreigner by a court and the foreigner has not re-married another foreigner/ Indian national, he/ she may be allowed extension of stay on X-2 visa by FRRO/ FRO concerned subject to usual checks and no local objection.

(ii) If the couple has no child, the existing X-2 visa of the foreigner will be cancelled and he/she will be granted exit.

(iii) If the foreign national is remarried to another foreign national, no extension of visa will be allowed and he/she will be granted exit.

(iv) In case the foreigner has remarried an Indian national, the existing X-2 visa would be cancelled and the foreigner would be granted exit advising him/her to come back on a new X-2 Visa."

8. Heard. A perusal of the documents on record clearly shows that the Petitioner does not have valid documents to continue to live in India, however, her son is an Indian citizen and is a minor. Her exit permit has also lapsed. Under these circumstances, Id. Counsel for the Respondent submits that the only option for the Petitioner would be to travel to Russia along with her son, obtain an Indian visa and come back to India. Ld. counsel for the Petitioner submits that since the child of the Petitioner is an Indian citizen, her request for extension of the Indian visa be considered in terms of the clause extracted above.

9. On an overall conspectus of facts in the matter, it is clear that the Petitioner has failed to obtain the requisite documentation required for her for her continued stay in India. The clause from the notification issued by the Ministry of Home Affairs, which has been extracted above, does show that in the case of a minor Indian national, if the foreigner has custody of such minor, extension of stay on X-2 visa can be considered. However, in the present case, this fact needs to be counterbalanced with the fact that, the Petitioner did not make any application for extension of visa for more than 9 years and the exit permit issued to the Petitioner has also lapsed.

10. Considering the facts of the present case, it is directed that the Respondents would consider the case of the petitioner as a whole, including the prayer of the Petitioner for extension of the visa. If on merits, the authorities are of the opinion that the Petitioner cannot be granted an extension of the visa, then the exit permit shall be extended for such reasonable duration so as to enable her to obtain a visa for her son to travel with her son to Russia. While considering the Petitioner's application for extension of visa, the authorities shall also bear in mind the current geo-political position and take a view. The said decision shall be taken within the next three months. Ordered accordingly.

11. The writ petition is disposed of along with all pending applications in the above terms.