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India and Pakistan: Residency rights for a married couple, where the spouses are a male Indian national and a female Pakistani national, in either India or Pakistan; whether a minor of Indian nationality can acquire Pakistani citizenship by descent; information on rights and obligations (2017-January 2019) [ZZZ200139.E]

Research Directorate, Immigration and Refugee Board of Canada

This Response to Information Request is an update to ZZZ106239 of 15 January 2019.

1. Citizenship Rights for Male Indian Nationals in Pakistan

The website of the Directorate General of Immigration and Passports of Pakistan indicates that foreign male persons married to a female Pakistani national cannot obtain citizenship on the basis of marriage (Pakistan n.d.a). The same source indicates that foreign male persons can acquire citizenship under Section 9 of the *Pakistan Citizenship Act* of 1951 (Pakistan n.d.a). Section 9 of the *Pakistan Citizenship Act* states the following:

Citizenship by naturalization. - The Federal Government may, upon an application made to it in that behalf by any person who has been granted a certificate of naturalization under the Naturalization Act, 1926 register that person as a citizen of Pakistan by naturalization:

Provided that the Federal Government may register any person as citizen of Pakistan without his having obtained a certificate of naturalization as aforesaid. (Pakistan 1951)

The *Naturalization Act* of 1926, including amendments up to 1973, states the following:

3. Grant of certificate of naturalization. -

1. The Federal Government may grant a certificate of naturalization to any person who makes an application in this behalf and satisfied the Federal Government -
 1. that he is not a minor;

2. that he is neither a citizen of Pakistan nor a subject of any state of which a citizen of Pakistan is prevented by or under any law from becoming a subject by naturalization;
3. that he has resided in Pakistan throughout the period of twelve months immediately preceding the date of the application, and has, during the seven years immediately preceding the said period of twelve months, resided in Pakistan for a period amounting in the aggregate to Act less than four years;
4. that he is of good character;
5. that he had an adequate knowledge of a language which has been declared by the Federal Government, by notification in the official Gazette, to be one of the principal vernaculars of Pakistan; and (f) that he intends, if the application is granted, to reside in Pakistan or to enter or continue in the service of the State in Pakistan:

Provided that nothing in clause (c) or clause (f) shall apply in the case of woman who was a citizen of Pakistan previously to her marriage to a person not a citizen of Pakistan and whose husband has died or whose marriage has been dissolved.

2. Nothing in this section shall be deemed to prevent the grant of a certificate of naturalization to any person to whom a certificate of naturalization has been issued under the Indian Naturalization Act, 1852.¹³ (Pakistan 1926)

In correspondence with the Research Directorate, a Lahore-based lawyer who specializes in citizenship law in Pakistan indicated that "[a]fter obtaining a certificate of naturalisation, the person can apply for a citizenship certificate and the Federal Government in its discretion grants the status of citizenship" (Lawyer 9 Jan. 2019). In correspondence with the Research Directorate, a lawyer and assistant professor at the School of Law at Lahore University of Management Sciences (LUMS), who specializes in legislation and politics in Pakistan, similarly indicated that "there are no procedural steps or guarantees regarding the obtaining of citizenship" (Assistant Professor 11 Jan. 2019).

Sources indicated that, upon taking Pakistani citizenship, Indian nationals must renounce their Indian citizenship (Assistant Professor 11 Jan. 2019; Lawyer 9 Jan. 2019).

According to the Assistant Professor,

[t]he spouse of a Pakistani woman must convert to Islam if he is not a Muslim as defined in law. Various Muslim sects are not recognized as "Muslim" in Pakistan. However, the Indian status/identity of the spouse is the key variable, not the religion in determining the possibility of visa or residency. (11 Jan. 2019)

Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

1.1 Lahore High Court Ruling

In correspondence with the Research Directorate, a representative of AGHS Legal Aid Cell, a Lahore-based law firm that works in the fields of constitutional and family law that provides "free legal representation for vulnerable women, children, bonded labourers, people in prison and religious minorities" (AGHS Legal Aid Cell n.d.), indicated that in a 2016 Lahore High Court ruling,

the petitioners challenged the discrimination of allowing a Pakistani man to be able to pass on citizenship to his spouse whereas not allowing a Pakistani wife to do the same. The Lahore High Court, after addressing the matter in depth, involving a detailed analysis of the Constitutional right under Article 25, the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention of the Elimination of Discrimination Against Women and the Beijing Declaration of 1995, passe [d] a judgement declaring section 10(a) of the Citizenship Act to be discriminatory and being in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. Thus, [the court's ruling was] ordering the relevant authorities to allow the Pakistani wife to pass on citizenship to her Indian husband. (AGHS Legal Aid Cell 15 Jan. 2019)

The Express Tribune, a Karachi-based newspaper, reports that the Supreme Court of Pakistan decided to examine the Lahore High Court ruling after the Ministry of Interior appealed the ruling in 2016 (*The Express Tribune* 30 Mar. 2018). The same source reports that

the federal government feared that the [Lahore High Court] did not consider the Indo-Pak[istan] relations and [that] the judgment [would] cause [an] inflow of Indian male citizen[s] into Pakistan, resulting in a threat to national security. ...

During the hearing, the bench observed that giving citizenship to foreign husbands may open another Pandora's Box.

The court also observed that the high court did not examine all the requirements of law, adding that the court cannot direct the government to grant citizenship on humanitarian grounds and ignoring the citizenship act.

Another judge Justice Ijazul Ahsan observed that "giving citizenship to foreign husbands is a sensitive issue". (*The Express Tribune* 30 Mar. 2018)

Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

1.2 Visas for Foreign Spouses

The Lahore-based lawyer indicated that male Indian nationals married to female Pakistani nationals can apply for a Pakistani residence visa (Lawyer 9 Jan. 2019). The Assistant Professor similarly indicated that male foreigners married to Pakistani nationals can stay in Pakistan "on limited term visas" and that the Indian spouse can apply for a "family visa" (Assistant Professor 11 Jan. 2019). The same source indicated, however, that "[t]he family visa itself may not be renewed, as it is entirely dependent on the political situation at the time, and the occasional blanket curbs placed by the

national security agencies on the granting of visas to Indian citizens or nationals" (Assistant Professor 11 Jan. 2019). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the Assistant Professor, "[t]here is ... no possibility for appealing negative decisions on visas, as the High Courts would not overturn a decision made by a national security agency" (11 Jan. 2019). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The website of the Ministry of Interior indicates that, according to the "Visa Policy for Indian Nationals,"

The following types of visas are granted to the resident/Non-resident Indian by the Government of the Islamic Republic of Pakistan:-

Visitors Visa: Visitors visa are issued to Indian Nationals to meet relatives, friends or for any other legitimate purpose. This type of visa is also issued to bonafide Indian businessmen for six months with three entries.

Transit Visa: Transit visa valid for up to two entries for stay in the city/port of entry for 72 hours issued to Indian nationals, proceeding to Indian by air or sea through Pakistan.

Tourist Visa: A non-extendable tourist visa valid for 14 days is issued by Pakistan High Commission, New Delhi through approved tour operators/travel agents. (Pakistan n.d.b)

A print-out of the requirements to obtain these visas and the application form, provided on the website of the Directorate General of Immigration and Passports of Pakistan, are attached to this Response (Attachment 1 and Attachment 2). According to the Directorate General of Immigration and Passports of Pakistan, visa applications can be submitted at Pakistani embassies or High Commissions abroad (Pakistan n.d.c).

1.2.1 Work Visa

The Lahore-based lawyer indicated that the husband "must obtain [the] requisite work visa for employment in Pakistan" (Lawyer 9 Jan. 2019). In contrast, the Assistant Professor indicated that "[e]mployment is not permitted for Indians, as per policy written by the Board of Investment of Pakistan [1]" (11 Jan. 2019). The website of the Board of Investment of Pakistan (BOI) provides the following requirements to apply for a work visa:

1. Company's covering letter stating the period of visa required and other necessary [details].
2. Passpor[t] consisting of three pages i.e, information, entry and last visa page.
3. Coloured [p]hotographs.
4. Company's Registration Certificate

5. Employment agreements.
6. Confirmation/guarantee of the credentials of the expatriates by the company on their letter head.
7. Company profile.
8. Work/Family visa processing fee details.
9. Original/proof of Work Visa processing fee US\$100 (equal in Pak rupees) for one year work visa. ...

Note: Five sets of above documents are required to [be] submitted by the company except of Company Profile for which 2 sets are required. (Pakistan n.d.d)

The application form, provided on the BOI website, is attached to this Response (Attachment 3). The same website indicates that the validity of the visa is between one and two years, while processing of applications and extensions takes about four weeks (Pakistan n.d.d).

1.3 Access to Employment, Healthcare Services and Education

In correspondence with the Research Directorate, a postdoctoral research fellow at Melbourne's Deakin University, who specializes in South Asian studies, political Islam and religious extremism, gave the opinion that a Muslim couple would not "face any discrimination in relation to job, healthcare or education" (Postdoctoral Research Fellow 8 Jan. 2019). The Lahore-based lawyer indicated that "there are no barriers on employment, education, healthcare of the woman and child in Pakistan" (Lawyer 9 Jan. 2019). According to the Assistant Professor, education and health care "is available for purchase for any person" (11 Jan. 2019).

1.4 Residency Rights for Indian Minors in Pakistan

According to the Lahore-based lawyer, a Pakistani woman can pass on citizenship to her child (Lawyer 9 Jan. 2019). The website of the Directorate General of Immigration and Passports of Pakistan indicates that minors under the age of 21 can acquire Pakistani citizenship by descent (Pakistan n.d.a). The same source provides the following requirements:

- Application on Form "M" (in quadruplicate) [from] Pakistani [p]arents/[g]uardians.
- Four photographs.
- Affidavit from Pakistani [p]arents/[g]uardian regarding fact of the case.
- Documentary evidence proving the national status of [p]arents/[g]uardians as [c]itizen of Pakistan.
- Fee of Rs.200 [C\$1.91].
- Application form can either be submitted direct[ly] to [the] Directorate General Immigration & Passports Islamabad or its [Regional Passport Offices] at Lahore & Karachi or to the Federal Government (i.e. Ministry of Interior). (Pakistan n.d.a)

A copy of "Form 'M'," provided on the website of the Directorate General of Immigration and Passports of Pakistan, is attached to this Response (Attachment 4). Regarding processing times, the same source indicates that "[i]t depends upon case to case, however after clearance by relevant security agencies, the case take[s] less than two months" (Pakistan n.d.a). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Citizenship Rights for Female Pakistani Nationals in India

Sources indicate that the granting of Indian citizenship on the basis of marriage to foreigners, including Pakistani citizens, to Indian citizens is governed by Section 5 of the *Citizenship Act* of 1955 (Professor 13 Jan. 2019; Senior Advocate 11 Jan. 2019). Section 5 of the *Citizenship Act*, as amended in 2015, indicates the following:

5. Citizenship by registration. -

1. [Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:

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1. a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;
2. a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
3. a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
4. minor children of persons who are citizens of India;

...

Explanation 1. - For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if -

1. he has resided in India throughout the period of twelve months immediately before making an application for registration; and
2. he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

Explanation 2. - For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.]

- 1A. [The Central Government, if it is satisfied that special circumstances exist, may after recording the circumstances in writing, relax the period of twelve months, specified in clauses (f) and (g) and clause (i) of Explanation 1 of sub-section (1), up to a maximum of thirty days which may be in different breaks.]
2. No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.
3. No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.
4. The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.
5. A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.
6. [If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption.]. (India 1955)

In correspondence with the Research Directorate, a senior advocate in Shillong, state of Meghalaya, who specializes in immigration law explained that "[i]n the law, there are no barriers to the grant of Indian citizenship to Pakistani spouses of Indian citizens, but the Central Government has the discretion to modify its policies from time to time in this regard" (Senior Advocate 11 Jan. 2019). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In correspondence with the Research Directorate, the managing partner of a New Delhi-based law firm that specializes in immigration law indicated the following:

There is a difference in citizenship application of the Pakistani spouse of Indian national on basis of religion.

If the Pakistani spouse is Muslim or Jew by religion then the application will be analysed by the competent authority of Indian government and such individual would require security clearance. Therefore, if Pakistani spouse belongs to a non-Muslim minority then they will be given concession for application for citizenship in comparison to Muslim Pakistani spouse in different areas like duration of residence before application, security checks, fee distinction and in other documentary proofs. While making such application, the spouse needs to submit valid foreign passport, valid residential permit,

spouse nationality evidence, photograph and valid marriage certification which according to orders by the Ministry of Home Affairs can also be the one issued by Municipal Corporation or Gram panchayat of Pakistan.

The spouse first needs to apply under the section 5(1) under form-II and then section 5 (1)(c).

The application for citizenship of Muslim Pakistani spouse will be examined by Ministry of Home Affairs (HMA) as per Citizenship Act, 1955, eligibility requirements and on different grounds which Ministry deems vital for assessing the application. In both the conditions once the citizenship application is accepted by the Indian authorities, they will have to renounce their existing citizenship and submit proof to the Ministry of Home Affairs. The Pakistani spouse will not be eligible for overseas citizenship of India (OCI) even if the spouse of such person is eligible as under section 7A of the Citizenship Act, 1955 if the person was [a] citizen or is [a] citizen of Pakistan will not be eligible for overseas citizenship of India. (Managing Partner 14 Jan. 2019)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.1 Visas for Foreign Spouses and Associated Rights

The Managing Partner indicated the following:

According to the Bureau of Immigration for registration and tracking of Visa immigrants to India, Pakistani spouse of Indian national can apply for Entry (X) visa. If Pakistani spouse of Indian national intends to continuously stay for 180 days, then the person will need to register themselves with the Foreign Regional Registration Officer [FRRO] or Foreign Registration Officer [FRO] concerned having jurisdiction over the place where the person intends to stay. All other foreign nationals are allowed to schedule appointment for registration, but Pakistani nationals are required to register with FRRO/FRO or police station within 24 hours of arrival in India until officially exempted from Police reporting. In case of duration being less than 180 days, the registration will not be required. A spouse of Indian citizen can approach [a] Foreign Regional Registration officer for extension of their Entry (X) Visa. (Managing Partner 14 Jan. 2019)

Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Section 1 of a document titled "Long Term Visas" posted on the website of the Ministry of Home Affairs of India indicates that "Pakistan[i] ... women married to Indian nationals and staying in India" are eligible for a Long Term Visa (LTV) with a validity of five years (India n.d.). A copy of the document, which outlines the procedures for obtaining an LTV, the conditions attached to it, and the rights while in India, is attached to this Response (Attachment 5). Further information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Note

[1] The Board of Investment (BOI) of Pakistan is the government agency attached to the Prime Minister's Office responsible for promoting investment and acting "as a focal point of contact for prospective investors, both domestic and foreign to provide them with all necessary information and assistance in coordinating with other [g]overnment [d]epartments/[a]gencies" (Pakistan n.d.e).

References

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Postdoctoral Research Fellow, Deakin University, Melbourne. 8 January 2019. Correspondence with the Research Directorate.

Professor, Jawaharlal Nehru University, New Delhi. 13 January 2019. Correspondence with the Research Directorate.

Senior Advocate, Shillong. 11 January 2019. Correspondence with the Research Directorate.

Additional Sources Consulted

Oral sources: India – Bureau of Immigration, Embassy in Washington, High Commission in Ottawa; lawyers in Chandigarh, Gangtok, Guwahati, Imphal, Islamabad, Kohima, Mumbai, New Delhi, Patiala, Shibnagar; Pakistan – Directorate General of Immigration and Passports, Embassy in Washington, High Commission in Ottawa, National Database and Registration Authority.

Internet sites, including: Amnesty International; ecoi.net; Freedom House; IRIN; Minority Rights Group International; UN – ReliefWeb; US – Department of State.

Attachments

1. Pakistan. N.d. Ministry of Interior, Directorate General of Immigration and Passports. "Visa Policy (for Indian Nationals)" (<http://www.dgip.gov.pk/Files/VisaforIndian.aspx>). [Accessed 13 Jan. 2019]
2. Pakistan. N.d. Ministry of Interior, Directorate General of Immigration and Passports. "Visa Application Form" (<http://www.dgip.gov.pk/Files/Visa%20Form.pdf>). [Accessed 13 Jan. 2019]

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4. Pakistan. N.d. Ministry of Interior, Directorate General of Immigration and Passports. "Form 'M' (<http://dgip.gov.pk/Files/Form%20M.pdf>).\" [Accessed 13 Jan. 2019]
5. India. N.d. Ministry of Home Affairs, Foreigners Division. "Long Term Visas (https://mha.gov.in/PDF_Other/AnnexVI_01022018.pdf).\" [Accessed 13 Jan. 2019]

ecoi.net summary:

Query response on residency rights of a married couple consisting of a male Indian and a female Pakistani national in either India or Pakistan (2017 - January 2019)



Countries:

India, Pakistan

Source:

IRB – Immigration and Refugee Board of Canada [\(/en/source/11213.html\)](/en/source/11213.html)

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