JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 1412 OF 2025

MUHAMMAD HANIF ISMAIL

VS

MINISTRY OF INTERIOR THROUGH ITS SECRETARY & ANOTHER

Petitioner by	**:**	**Mr. Muhammad Ibrahim Khan, Advocate.**
Respondents by	**:**	**Malik Muhammad Khalid, Advocate for NADRA.** **Raja Zamir-ud-Din Ahmed, A.A.G.**
Assisted by	**:**	**Ms. Amna Danial Khawaja, Judicial Law Clerk.**
Date of hearing	**:**	**25.06.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "**Constitution**"), Muhammad Hanif Ismail (**"Petitioner"**), on behalf of his wife, Mst. Fatima Haneef, seeks relief against the rejection of his wife's NICOP application. The Petitioner prays that this rejection be declared illegal, unlawful, and violative of due process; that the Respondents, namely NADRA and the Ministry of Interior, be directed to issue a valid NICOP to his wife in accordance with law; that an inquiry be conducted into the arbitrary actions of the Respondents, with penalties imposed on those found responsible; and that the costs of litigation be awarded to the Petitioner.

2. The brief facts of the case as per the contents of the Petition are that the Petitioner, namely Muhammad Hanif Ismail, got married to Fatima Haneef on 01.11.1994 and has eight children, all of whom are Pakistani citizens holding valid CNICs and passports. The Petitioner's wife, Fatima Haneef, was born and raised in Madina, Saudi Arabia, and is an Overseas Pakistani by descent. On 24.02.2024, the Petitioner's wife applied for a NICOP, which was deferred by NADRA on 13.06.2024. The Petitioner's wife's nephew visited NADRA Headquarters to inquire about the deferral, and NADRA officials asked him to

submit an affidavit confirming the Petitioner's links and relationship with her family members. Despite submission of the required affidavit and all necessary documents, the Petitioner's wife's NICOP application was rejected on 20.10.2024. The Petitioner's attorney holder also visited NADRA offices in Lahore and Islamabad multiple times to resolve the issue, but in vain. Hence, the Petitioner has filed the instant Petition.

3. The learned counsel for the Petitioner submits that the denial of the Petitioner's wife's NICOP has left her unable to exercise her fundamental rights as a Pakistani citizen, including the right to travel, access banking services, and legal protections; that the actions of Respondents violate the Pakistan Citizenship Act, 1951 **("Act, 1951")**, particularly Sections 3 and 5, which grant citizenship by birth and descent, respectively; that the Respondents have violated the NADRA Ordinance, 2000, by failing to provide a valid legal basis for the rejection of the Petitioner's NICOP application and by not following due process; and that judicial precedents, including 2000 MLD 551, establish that the right to citizenship and identity documents is fundamental and legal, and any denial of these rights must be based on substantive legal grounds.

4. On behalf of NADRA (Respondent No.2), a Report has been submitted which reveals that the instant Writ Petition is not maintainable and proceedable, as there is a factual controversy between the parties which needs to be resolved through trial by a competent Court of law. That the Petitioner's wife has a remedy to approach the Verification Board at the Regional Head Office, Karachi or to the Federal Government in terms of Section 16-A of the Act, 1951, read with Rule 13(a) of the Pakistan Citizenship Rules, 1952 **("Rules, 1952")** for issuance of a certificate. That the Petitioner is neither an aggrieved party nor has locus standi to file the instant Writ Petition**,** hence it is liable to be dismissed. That the Petitioner's wife applied for issuance of NICOP vide TID No.770000660596 through online (Pak Identity) platform. The case was marked suspect and verification was recommended through the Monitoring & Evaluation (M & E) Department. The M&E department reported vide letter dated 07.10.2024 that the Petitioner's wife's family identify themselves as Bengali nationals. Due to this report, further processing of the application was stopped and the TID was marked suspect. Lastly, it is prayed that the instant Petition may kindly be dismissed.

5. I have heard the learned counsel for the parties and perused the record with their able assistance.

6. This Petition arises from the rejection of the Petitioner's wife's application for a National Identity Card for Overseas Pakistanis (NICOP) by NADRA, on the stated ground that the Petitioner's wife is an alien as she allegedly belongs to Burmese origin. The matter calls for determination of the Petitioner's wife's status under the Act, 1951, and whether, in law, she qualifies as a citizen of Pakistan. Perusal of the record reveals that the Petitioner's wife, Fatima Haneef, was born and raised in Madina, Saudi Arabia, and is an Overseas Pakistani by descent. It is pertinent to mention herein that not only Fatima Haneef's father, Haji Muhammad Shafi S/O Laal Muhammad, was a Pakistani citizen by virtue of having the Certificate of Domicile dated 03.06.1980 issued by the Federal Government under Section 17 of the Act, 1951 read with Rule 23 of the Pakistan Citizenship Rules, 1952, but her mother, namely, Mst. Chaman Khatoon, was also a Pakistani citizen as per the evidence available on record. Moreover, the Birth Certificate of Fatima Haneef dated 24.11.1975, bearing Certificate No. LM/356, *prima facie* reveals that her parents were Pakistani nationals.

7. The record further reveals that Fatima Haneef, via Pak-Identity online application dated 22.05.2024, had applied for a NICOP, which was deferred by NADRA vide email dated 13.06.2024 due to certain documents missing from her file. Fatima Haneef was required to submit contact numbers of two family members residing in Pakistan along with their addresses for verification purposes. Thereafter, a Report dated 07.10.2024 was prepared and sent to the M & E Directorate, HQ NADRA, Islamabad, wherein it was disclosed that her nephew was residing at the given address. The latter, by providing an attested affidavit to the concerned authorities, testified and declared that Fatima Haneef is his maternal aunt and real daughter of Mr. Muhammad Shafi and Mst. Chaman Khatoon. However, in the said Report, the concerned authority raised objections on the nationality of Fatima Haneef by stating the following:-

a) *Fatima Haneef's parents had permanently resided / settled down in Saudi Arabia since 1975 after receiving Iqama;*
b) *Fatima Haneef's parents as well as one sister, namely Mst. Sara Khatoon, had passed away in Saudi Arabia;*

c) *Fatima Haneef's family identifies themselves as Bengali-speaking, when they are doubtful Burmese speaking; and*
d) *The address mentioned on Fatima Haneef's parents MNICs is Burmese Colony, which further connotes that Fatima's family is likely of Burmese origin.*

In light of the above findings, it was suggested by the authority that the national status of Fatima Haneef, along with all her family members, may be verified through the concerned agency as per NADRA SOPs. However, vide email dated 29.10.2024, the application was rejected.

8. There is no dispute regarding the well-settled proposition that under Section 17 of the Act, 1951 (hereinafter referred to as the "Act, 1951"), the Federal Government is empowered to grant a Certificate of Domicile to any individual in respect of whom it is satisfied that the person has ordinarily resided in Pakistan for a continuous period of not less than one year immediately preceding the application and has acquired domicile within the territory of Pakistan. For ready reference, Section 17 of the Act, 1951 and Rule 23 of the Rules, 1952 are reproduced hereunder:-

> ***"17. Certificate of domicile.--****The Federal Government may, upon an application being made to it in the prescribed manner containing the prescribed particulars grant a certificate of domicile to any person in respect of whom it is satisfied that he has ordinarily resided in Pakistan for a period of not less than one year immediately before the making of the application, and has acquired a domicile therein."*
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> ***"23. Certificate of domicile.---****The Central Government, the Provincial Government of a District co-ordination officer other than in Islamabad capital territory or Chief Commissioner. Islamabad capital territory or an authorized officer may on application made to it in this behalf issue a certificate of domicile in Form P-1 in the manner, following:-*
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> *(a) An application for a certificate of domicile shall be made in Form `P-I in duplicate. It shall be accompanied by an affidavit affirming the truth of the statements made in it and affirming further that the applicant had not migrated to India after the first day of March, 1947 or that, having so migrated, had returned to Pakistan under a permit for resettlement or permanent return issued by an officer authorized by the Government of Pakistan.*
>
> *(b) Any authority to whom an application is presented may demand such evidence as it may consider necessary for satisfying itself that the facts stated in the application are correct that the applicant has been continually resident in Pakistan for a period not less than one year and intends to live permanently in Pakistan.*

> *(c) The authority shall pass such orders on the application as it deems fit."*

Bare reading of the above provisions shows that the issuance of a Domicile Certificate under Section 17, when read conjointly with Rule 23 of the Rules, 1952, is indicative of the legal status of an individual as a domiciled person of Pakistan. Judicial pronouncements have further affirmed that the term "domicile" under Section 17, in this context, signifies a person's settled status as a citizen of a particular state or country. Reliance in this regard is placed upon a judgement cited as *District Education Officer (Female), Charsadda and others Versus Sonia Begum and others* **(2023 S C M R 217)**, wherein the august Supreme Court of Pakistan observed that:-

> *"**The expression "domicile" would reflect a person's status as a citizen of a particular state or country**, whereas the expression "permanent residence" is a pure question of fact with regard to residence in a particular area. In line with Section 16 of the Pakistan Citizenship Act, 1951 ("Citizenship Act"), the Federal Government may by order deprive any such citizen of his citizenship if it is satisfied that he obtained his certificate of domicile or certificate of naturalization under the Naturalization Act, 1926 by means of fraud, false representation or the concealment of any material fact. **Whereas under Section 17 of the Citizenship Act, the Federal Government grants a certificate of domicile to any person in respect of whom it is satisfied that he has ordinarily resided in Pakistan for a period of not less than one year immediately before making an application and has acquired a domicile therein. The issuance of domicile certificate under Section 17 of the Citizenship Act read with Rule 23 of the Pakistan Citizenship Rules, 1952 makes it evident that a particular person is a domiciliary of Pakistan.**" (Emphasis added)*

Similar view has been taken by the apex Courts of Pakistan in *Abbu Hashim v. Federation of Pakistan through Secretary, Ministry of Interior* **(PLD 2021 Sindh 492**) and *Mehmood ul Hassan Khan v. DOW University of Health Sciences,* **(PLD 2008 Karachi 49)**. Moreover, a Certificate of Domicile, issued under the said provision of law, is evidence of the declaration of intent by the holder to permanently reside in Pakistan, and simultaneously, a renunciation of domicile of origin in another country. In essence, the Certificate of Domicile, contemplated by and issued under Section 17 of the Act, 1951, is specifically intended for a class of persons who were not originally citizens of Pakistan, but who, having migrated to Pakistan during the prescribed period after the creation of the State, have abandoned their foreign domicile, and have ordinarily resided

in Pakistan for at least one year with the intention of permanently settling in the country for the purpose of acquiring Pakistani citizenship. Reliance in this regard is placed on *Mubashar Mehmood and another v. Home and Tribal Affairs through Secretary Civil Secretariat and others* (**PLD 2018 Balochistan 49)** and *Noor Fatima v. Alia Mueed* **(PLD 1988 Lahore 437)**, wherein the Courts observed that:

> *"As a matter of fact, the domicile certificates envisaged by and issued under Section 17 of the Act of 1951 are meant for a class of persons, who are originally not the citizen of Pakistan, have migrated to this country after emergence of Pakistan, during the specified period, have abandoned their domicile of origin and having ordinarily resided in Pakistan for a period of not less than one year with the intention of residing therein permanently in order to acquire citizenship of Pakistan."*

9. It is pertinent to mention herein that in terms of sub-section (2) of Section 6 of the Act, 1951, Fatima Haneef had acquired citizenship of Pakistan automatically being a minor child dependent upon her father at the time of his registration as a citizen by migration. The said provision clearly stipulates that the registration of a person as a citizen under sub-section (1) shall, by operation of law, extend to include his wife and any minor child dependent upon him, whether wholly or partially. For ease of reference, Section 6 of the Act, 1951 is reproduced hereunder:

> ***"6. Citizenship by migration.—*** *(1)* ***The Federal Government may, upon his obtaining a certificate of domicile under this Act, register as a citizen of Pakistan by migration any person*** *who after the commencement of this Act and before the first day of January, 1952, has migrated to the territories now included in Pakistan from any territory in the Indo-Pakistan sub-continent outside those territories, with the intention of residing permanently in those territories :*
>
> *Provided that the Federal Government may, by general or special order, exempt any person or class of persons from obtaining a certificate of domicile required under this sub-section.*
>
> *(2)* ***Registration granted under the preceding sub-section shall include, besides the person himself, his wife, if any****, unless his marriage with her has been dissolved,* ***and any minor child of his dependent whether wholly or partially upon him.****" (Emphasis added)*

In light of the above provision, while the father was granted Pakistani citizenship pursuant to a Certificate of Domicile under Section 17 of the Act, 1951, Fatima was a minor at the relevant time; therefore, her citizenship status as a Pakistani

national stood established by virtue of the statutory inclusion provided under Section 6(2), requiring no separate application or registration on her part.

10. Furthermore, the Petitioner's wife, Fatima Haneef, was born in the Kingdom of Saudi Arabia after the commencement of the Act, 1951. Hence, another question arises whether Fatima Haneef, born abroad to Pakistani parents, qualifies as a Pakistani citizen under the applicable legal framework. In this regard, Section 5 of the Act, 1951 is the governing provision. It stipulates that a person born after the commencement of this Act shall be a citizen of Pakistan by descent if his/her parent is a citizen of Pakistan at the time of his/her birth. Therefore, Fatima Haneef also qualifies unconditionally as a Pakistani citizen by descent, having been born to Pakistani parents.

11. Fatima Haneef, having later married a Pakistani citizen also residing in Saudi Arabia, has eight children, all of whom hold valid Pakistani identity documents and citizenship. Despite this clear legal entitlement, NADRA rejected her NICOP application, allegedly on the basis of her ethnic or ancestral background—that her family is of Burmese origin. Such reasoning is wholly untenable in law. Citizenship under the Act, 1951 is determined by the statutory criteria, not ethnicity or lineage. It is an established principle that administrative agencies are bound by law, and must act in accordance with the statute under which they operate. Any doubt, if at all, subsisted with regards to Fatima Haneef's citizenship, recourse could still be made to Section 10(2) of the Act, 1951 read with Rule 15 of the Rules, 1952. This provision states that a woman who has been married to a citizen of Pakistan shall be entitled to citizenship of Pakistan on making application to the Federal Government in the prescribed manner. However, in case she is an alien, she has to first obtain a Certificate of Domicile under Section 17 and take the oath of allegiance in the form set out in the Schedule to the Act in order to be registered as a citizen of Pakistan. For ready reference, Section 10(2) and Rule 15 are reproduced hereunder:-

> ***"10. Married women. —*** *(2) Subject to the provisions of sub-section (1) and sub-section (4)* ***a woman who has been married to a citizen of Pakistan or to a person who but for his death would have been a citizen of Pakistan under sections 3, 4 or 5 shall be entitled, on making application therefor to the Federal Government in the prescribed manner, and, if she is an alien, on obtaining a certificate of domicile and taking the oath of allegiance in the form set out in the Schedule to***

this Act, to be registered as a citizen of Pakistan whether or not she has completed twenty-one years of her age and is of full capacity.

"15. Any woman who claims citizenship under subsection (2) of section 10 of the Act shall apply in Form 'F' in triplicate to the Central Government in the following manner, namely: -
(a) If her husband is alive, each form shall be accompanied by the following documents:
(i) a certificate of Pakistan citizenship granted to her husband or any other evidence establishing the husband's citizenship of Pakistan;
(ii) a marriage certificate or any other evidence establishing the applicant's marriage.
(b) If her husband is dead at the time of the application, the application shall be accompanied by the certificate or other evidence mentioned in sub-clause (ii) of clause (a), and the certificate mentioned in sub-clause (i) of the clause or by a statement of facts recorded on oath showing that he had been alive he would be entitled to citizenship of Pakistan under sections 3, 4 or 5 of the Act.
(c) If the applicant is an alien, the application shall further be accompanied by a certificate--
(i) of domicile issued under rule 23 of these Rules, and
(ii) that she has taken the oath of allegiance set out in the Schedule to the Act.
(d) If the applicant's husband but of his death would have been a citizen of Pakistan under the provisions of subsection (1) of section 6 of the Act (Whether he migrated as provided in that subsection or is deemed under the provisions to section 7 to have so migrated), the application shall be accompanied by a certificate issued by the Provincial Government that the husband would have been entitled to a certificate under rule 10 or 11 of these Rules.
(e) The Central Government shall, after such enquiries as it considers necessary, pass such orders on the application as it deems fit."

12. It is essential to mention herein that the children and spouse of Fatima Haneef are recognized as Pakistani citizens. In the case of *Masooma and another Versus Federal Government through Ministry of Interior Pak Secretariat and another* **(PLD 2024 Balochistan 33)**, the moot question before the Court was whether the petitioners were entitled to issuance of CNICs being Afghan nationals married to Pakistani citizens. The Court acknowledged their statutory right under Section 10(2) of the Act, 1951 and directed the petitioners to approach the Federal Government in the prescribed manner for grant of Certificate of Domicile. The Court observed that:-

“It is admitted feature of the case that the petitioners are claiming citizenship under subsection (2) of section 10 of the Act, 1951 being

> *married to Pakistani citizens, as such; they have to approach the Federal Government for issuance of Certificate of Domicile within the purview of section 17 of the Act of 1951"*

13. Furthermore, in the case of *Sharifan and 6 others Versus the Federation of Pakistan through Secretary, Ministry of Interior and Narcotics Control, Interior Division, Islamabad* **(PLD 1998 Lahore 59)**, the Lahore High Court, by placing reliance on several judgments to interpret Section 10(2) of the Act, 1951, stated the following:-

> *"In the case of Harvey v. Farnie (1882) 8 Appeal Cases 43, it has been held that a* ***domicile may be acquired by operation of law and a woman by virtue of her marriage acquires the domicile of her husband.*** *In a latter case of Lord Advocate v. Jaffrey (1921) 1 Appeal Cases 146), it has been held that so long as the marriage subsists, the wife is incapable of acquiring a separate domicile of her own, even though her husband has deserted her. In the Re: Wallach (1950) 1 All ER 199), it was held that nothing short of a marriage tie would enable a married woman to acquire a separate domicile. Even on the death of the husband, the widow retains the domicile of her late husband until she changes it by her own act, e.g., by re-marriage. Similar view was taken by the Indian Supreme Court in the case of Sint. Satya v. Teja Singh AIR 1975 Supreme Court 105)." (Emphasis added)*

14. Thus, should any doubt persist regarding Fatima Haneef's citizenship status, recourse may be had to the remedial framework provided under Section 10(2) of the Act, 1951, read with Rule 15 of the Rules, 1952. This provision entitles a woman who has contracted marriage with a citizen of Pakistan to acquire Pakistani citizenship upon making an application to the Federal Government in the manner prescribed by law. However, where such a woman is classified as an alien, she is required, as a condition precedent to registration, to obtain a Certificate of Domicile under Section 17 of the Act, and to make and subscribe to the oath of allegiance in the form set out in the Schedule to the Act, before being registered as a citizen of Pakistan.

15. In view of the foregoing discussion, this Court finds that the Petitioner's wife, Fatima Haneef, is a citizen of Pakistan by descent under Section 5 of the Act, 1951, and has statutory safeguard under Section 6(2) as well. NADRA's rejection of her NICOP application is hereby declared to be without lawful authority and of no legal effect. Such conduct by NADRA runs afoul of the Constitutional guarantee of equality before the law enshrined in Article 25 of the

Constitution, and offends the principles of natural justice. The Respondents are hereby directed to process the Petitioner's wife's NICOP application in accordance with law within 30 days from the receipt of copy of this judgment. The instant Petition is **disposed of** in light of the above directions.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____.

JUDGE

Approved for Reporting
Blue Slip added.

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