

LEGAL ANALYSIS ON NATURALIZATION OF IMMIGRANTS IN MYANMAR

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Abstract

Immigration is the act of entering a country other than one's native country with the intention of living there permanently. Integration of immigrants has become a permanent issue on the political agenda of the host countries. States exercise their sovereign powers not only to determine who will be admitted and for how long but also to regulate laws and regulations for noncitizens who are admitted as immigrants and who are entitled to their citizenship. Myanmar is situated in common borders with China, Laos, Thailand, Bangladesh and India. Due to the closeness of respective borders, Myanmar has been confronting issues such as boundary and immigration issues inevitably since independence in 1948. This paper aims to analyze how to confer naturalized citizenship to an immigrant in Myanmar and under what circumstances naturalized citizenship can be removed. This paper carries out a legal analysis based on International Conventions relating to immigrants and domestic laws dealing with immigrants. The results from this study indicate that the Myanmar Citizenship Law, 1982 provides three types of citizenship: citizens, associate citizens, and naturalized citizens. Naturalized citizenship can only be acquired by application via one of five criteria. Regarding immigrants in Myanmar, especially the third generation of Bengalis who arrived before 1948 can be granted Myanmar citizenship. The granting of citizenship depends on the existing laws of the States and such existing laws may be changed when the government or the policy of the government changes. States enact their immigration laws based on their national interests. Finally, the study recommends that the civic knowledge requirement and the citizenship test should be added to the Myanmar Citizenship Law 1982.

Keywords: immigrant, naturalization, citizenship, acquisition, removal, civic knowledge

Introduction

The phenomenon of immigration is not new and it has been part of the human experience since before recorded history. The process of global immigration is influenced by several factors, such as the economy, lack of employment opportunities, political instability, religious persecution, environmental crisis, etc. Besides these factors, technical progress and human rights and democracy progress in most countries are new emerging processes in the twenty-first century. People especially from developing countries move to developed countries to improve their lives. The host countries face the reality of controlling or managing immigrants. All countries around the world have the authority to determine who is allowed to enter the country and for how long.

Integration of immigrants has become a permanent issue on the political agenda of the host countries. The concept of integration is the inclusion of new populations into the existing society of the immigration country. The acquisition of naturalized citizenship is a basic factor for the political integration of immigrants and the quick acquisition of citizenship is considered a sign of successful political integration. This allows immigrants full participation in the legal and political institutions in the society and also immigrants can get a right to participate in sustainable development.

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Before 1824, there had been no foreign settlement in Myanmar. The first Anglo-Myanmar War started in 1824. After the war, the British annexed the western part of Myanmar and turned it into one of the states of India. Since then, foreigners from the neighboring country have settled in Myanmar for various reasons. Thus, colonialism is the main reason why foreigners settled in the country for the very first time. The country regained its independence on January 4, 1948, and therefore had to live under foreign rule for over 120 years between 1824 and 1948. Another reason for the settlement of foreigners is that the border between Myanmar and Bangladesh (at that time, East Pakistan) was only defined in 1966 when the Nave River became the border.

Myanmar is one of the strict *jus sanguinis* states as opposed to *jus soli* states. Citizenship can be acquired automatically by birth or non-automatically by application. The Myanmar Citizenship Law 1982 and the Procedures on the Myanmar Citizenship Law are primarily applicable to the acquisition and removal of naturalized citizenship in Myanmar.

Materials and Methods

Research Questions

1. How can naturalized citizenship be acquired in Myanmar and under what circumstances naturalized citizenship can be removed?
2. What are the requirements for naturalization?

Research Methods

This paper applies legal analysis based on International Conventions relating to Immigrants and national laws dealing with Immigrants in Myanmar and some countries. Secondary data is collected from related literature and some reliable internet sources.

Who is an Immigrant?

The word “Immigrant” has different connotations in different countries. For instance, in countries where citizenship is automatically granted to anyone born in the country, “immigrants” may generally be assumed to include only those who were born abroad. However, in countries where citizenship is linked to ethnic origin, “immigrants” may generally be inferred to include those of foreign ethnicity, regardless of their place of birth.¹ Generally, every immigrant has the same factors. They move across an international border away from their country of origin. They move voluntarily or involuntarily. Their intention of living is permanent and their movements relate to one of the push and pull factors of immigration. On the other hand, migrants move across an international border or within a State.

International Legal Framework Relating to Immigrants

States have broad authority to regulate the movement of foreign nationals across their borders. Non-nationals enjoy all of the universal, indivisible, and unalienable rights applicable in international law. The following conventions are the international conventions relating to immigration.

¹ David Card, Christian Dustmann and Ian Preston, Understanding attitudes to immigration: The migration and minority modulation of the first European Social Survey, CReAM discussion paper No.03/02, 2005, P. 3.

- (i) Convention regarding the Status of Refugees (1951) and its protocol (1967)
- (ii) Convention relating to the Status of Stateless Persons (1954)
- (iii) International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- (iv) International Covenant on Civil and Political Rights (1966)
- (v) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
- (vi) Protocol against the Smuggling of Migrants by Land, Air, and Sea which supplemented the United Nations Convention against Transnational Organized Crime (2000)

The United Nations Convention relating to the Status of Refugees was adopted in 1951 and entered into force on 22 April 1954. The 1951 Convention was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe. The 1967 Protocol removed these restrictions and thus gave the Convention universal coverage.¹ As of December 2023, 146 States ratified the 1951 Convention and the 1967 Protocol was ratified by 147 countries. Article 3 of the Convention provides that the contracting States shall apply the provisions of this Convention to refugees without considering their race, religion, or country of origin. To the same degree that nationals of other countries are granted rights, refugees are granted fundamental rights like freedom of movement according to Article 26 of the Convention. Article 31 of the Convention further stipulates that refugees should not be penalized for their illegal entry or stay, with certain exceptions. This recognizes that refugees may have to break immigration laws to seek asylum. Penalties that are prohibited might include being charged with immigration or criminal offenses dealing with the seeking of asylum, or being arbitrarily detained purely based on seeking asylum.²

The Convention relating to the Status of Stateless Persons was adopted by the United Nations Conference on the Status of Stateless Persons in 1954 and entered into force on 6 June 1960. As of December 2023, it has been ratified by 97 States. Article 3 of the Convention mentions that the contracting States shall apply the provisions of this Convention to stateless persons without regard to their race, religion, or country of origin. Article 26 of the Convention provides that subject to any regulations applicable to foreigners generally in the same situations, stateless persons who are lawfully residing in its territory are granted the right to choose their place of residence and to move freely within its territory. Except in cases involving national security or public order, the contracting States shall not expel a stateless person lawfully in their territories.³ Article 32 of the Convention prescribes that States are also urged to assist stateless people in their assimilation and naturalization.

The International Convention on the Elimination of All Forms of Racial Discrimination is an instrument for protecting the rights of migrants. It was adopted by the United Nations General Assembly in 1965 and entered into force on 4 January 1969. As of December 2023, 182 States have ratified it. According to Article 5 of the Convention, state parties commit to outlawing and

¹ Introductory note by the Office of the United Nations High Commissioner for Refugees, 2010, P. 2.

² Ibid, P. 3.

³ Article 31 of the Convention relating to the Status of Stateless Persons (1954).

eliminating racial discrimination in all its forms and to guarantee the right of everyone, regardless of race, color, national or ethnic origin, to equality before the law, particularly in the enjoyment of the civil rights, such as freedom of movement and residence within the border of the State, the right to leave any country, including one's own and to return to one's country and the right to nationality.¹

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations General Assembly in 1966 and entered into force on 23 March 1976. As of December 2023, 173 States have ratified it. The ICCPR describes the basic rights of all persons. Article 2 specifies that such rights are provided without discrimination as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. The ICCPR provides that everyone residing legally within the territory of a State is entitled to the freedom of movement and to choose where they want to live. The ICCPR specifies that nationals have the right to leave and re-enter their countries. However, States may not arbitrarily deny nationals the right to re-enter.² Although freedom of movement is often recognized as a civil right in the International Covenant on Civil and Political Rights (1966), freedom only applies to movement within national borders and the ability to return to one's home state.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the United Nations General Assembly in 1990 and entered into force on 1 July 2003. As of December 2023, 59 States have ratified it. It reaffirms fundamental human rights norms and embodies them in an instrument applicable to migrant workers and their families. The underlying objective of the Convention is to guarantee minimum rights for migrant workers and members of their families, regardless of their legal status or irregular immigration status. The rights of migrants who have been detained by State authorities for immigration and criminal offenses are covered in Articles 17 to 21. The rights of migrants in expulsion proceedings are outlined in Article 22, which also forbids collective expulsion. Article 23 grants the right of all migrants to seek the protection and assistance of the consular or diplomatic officials of their countries of origin.

The Protocol against the Smuggling of Migrants by Land, Sea, and Air, both of which supplement the United Nations Convention against Transnational Organized Crime was adopted by the United Nations General Assembly in 2000 and entered into force in January 2004. As of December 2023, 151 States have ratified it. Article 16 of the Smuggling Protocol sets forth States to preserve and protect the rights of migrants who have been smuggled, whereas Article 18 requires States to facilitate the return of migrants.

Most of the international Conventions and protocols have been widely ratified although others have entered into force with relatively few parties. As soon as the States have ratified the Conventions, they need to modify or amend their national legislation to be in line with the provisions of the Convention. It should be noted that only 59 States have ratified the UN (United Nations) Convention on the Protection of All Migrant Workers and Members of Their Families. Myanmar has not ratified all the above-mentioned Conventions except the Smuggling Protocol.

¹ Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965).

² Article 12 of the International Covenant on Civil and Political rights (1966).

Domestic Legal Framework Dealing with Immigrants

There are existing immigration laws that determine who is allowed to enter the country and for how long, and other matters such as citizenship. The following are domestic laws relating to immigration applied in Myanmar since the colonial period.

- (1) The Foreigners Act 1864
- (2) The Registration of Foreigners Act 1940 which was amended in 1956, 1957, and 1958
- (3) The Registration of Foreigners Rules 1948
- (4) The Myanmar Immigration (Emergency Provisions) Act 1947 which was amended in 1955, 1956, 1957, 1958, and 1990
- (5) The Myanmar Immigration (Detention) Rules 1951
- (6) The 1949 Registration of Residents in the Union of Myanmar Act
- (7) The 1951 Registration of Residents in the Union of Myanmar Rules
- (8) The Myanmar Citizenship Law 1982 which was amended in 1997 and
- (9) The Permanent Resident of a Foreigner Rules 2014

What is Citizenship?

Citizenship is the legal institution that denotes a person's full membership in a state with the associated rights and obligations. Citizenship is also defined as "the legal status of having the right to participate in and be represented in politics".¹ Citizenship distinguishes between members and outsiders in a migration context based on their various relationships with particular states. The right to free movement within state territories, as well as the right to readmission to this territory, has become a characteristic of modern citizenship. Citizenship, however, functions as a control device in the international arena, tightly limiting state obligations to foreigners and allowing governments to keep them out of, or remove them from, their jurisdiction.² On the other hand, a state grants certain political, social, and legal rights to its citizens, and in turn, citizens need to respect the laws established by the state.

Types of Citizenship

Every country has its laws, rules, procedures, and criteria as to who is entitled to its citizenship. According to the practices and laws regarding citizenship in countries around the world, citizenship can be acquired by the following types:

- (1) Citizenship by birth
- (2) Citizenship by descent
- (3) Citizenship by marriage and
- (4) Citizenship by naturalization.

¹ www.unesco.org/themes/glossary/ci...

² Rainer Bauböck, *Migration and Citizenship: Legal Status, Rights and Political Participation*, IMISCOE Reports, Amsterdam University Press, 2006, P.16.

Citizenship by birth (birthright citizenship or *jus soli*) refers to the principle that everybody born in a country is automatically a citizen of that country.¹ A good example of a *jus soli* state is the United States. The United States is one of the few nations that assign citizenship by birth within the territorial boundaries of the nation, irrespective of the parents' citizenship.² Although China, Japan, and Thailand are *jus sanguinis* states, they follow the *jus soli* system with certain conditions. A person born in China is conferred Chinese nationality if their parents are stateless or uncertain nationality and have settled in China.³ In a case where the child is born in Japan, a child may acquire nationality by birth when both parents are unknown or have no nationality.⁴ A person born within the Thai Kingdom of alien parents may acquire Thai nationality by birth if their parents must have a legal status during their stay in the country.⁵

In theory, the *jus soli* is completely opposed to the *jus sanguinis* rule, which gives citizenship only if one or both parents are citizens. Citizenship by descent (*jus sanguinis*), the principle of blood, descent, and heritage, is crucial in determining who he or she is and who can become a citizen. It is unimportant where people were born.⁶ The United States and Australia grant citizenship by descent to an adopted child.⁷ On the other hand, Myanmar does not grant citizenship by descent to an adopted child because a child who is adopted by a citizen or by an associate citizen or by a naturalized citizen is not eligible for any of these three types of citizenship.⁸

Citizenship by marriage (*jus matrimonii*) means acquiring citizenship by marriage by a national.⁹ Myanmar recognized citizenship by marriage if a person married to a citizen or to an associate citizen or to a naturalized citizen, who is holding a Foreigner's Registration Certificate anterior to the date the Myanmar Citizenship Law 1982 comes into force. The last way to acquire citizenship is through naturalization. Naturalization is the legal procedure by which a noncitizen or stateless person applies for citizenship of a nation.¹⁰

Myanmar is one of the strict *jus sanguinis* states as opposed to *jus soli* states. Myanmar Citizenship can be acquired automatically by birth or non-automatically by application. The Myanmar Citizenship Law 1982 and the Procedures on the Myanmar Citizenship Law are primarily applicable to the acquisition and removal of naturalized citizenship in Myanmar. The Myanmar Citizenship Law 1982 has recognized three different types of citizenship: "citizens", "associate citizens" and "naturalized citizens". Specific documentation is required for each type of citizenship according to the Myanmar Citizenship Law 1982 – the Citizenship Scrutiny Card

¹ <https://www.scu.edu/all-about-ethics>

² Kevin R. Johnson, Raquel Aldana, Bill Ong Hing, Leticia M. Saucedo and Enid Trucios-Haynes, Understanding Immigration Law, Carolina Academic Press, 2nd Edition, 2015, P.605.

³ Article 6 of the Nationality Law of the People's Republic of China 1980.

⁴ Article 2 of the Japanese Nationality Law 1950.

⁵ Section 7 bis as added by the Thai Nationality Act (No.2) B.E. 2535 (1992).

⁶ www.unesco.org/themes/glossary/ci...

⁷ Section 320 of the U.S. Immigration and Nationality Act of 1952 and Section 19 C(2) of the Australian Citizenship Act 2007.

⁸ Section 73 of the Myanmar Citizenship Law 1982.

⁹ Ngoh Tiong Tan, Transforming Society: Strategies for Social Development from Singapore, Asia and Around the World, Taylor & Francis Ltd, 2017, P.99.

¹⁰ Ibid, P. 98-99.

(CSC), Associate Citizenship Scrutiny Card (ACSC), or Naturalized Citizenship Scrutiny Card (NCSC), respectively.¹

Section 2 of the Myanmar Citizenship Law, 1982 provides that "Citizen" means a Myanmar citizen, "Associate Citizen" means an associate citizen prescribed by this Law, and "Naturalized Citizen" means a prescribed by this Law. In addition to these three different types of citizenship cards, residents in the Union of Myanmar were issued National Registration Cards (NRC) or "three-folded cards" according to the 1949 Registration of Residents in Union of Myanmar Act and the 1951 Registration of Residents in Union of Myanmar Rules. Foreigner registration cards are granted to persons who are not citizens of the Union of Myanmar according to the Registration of Foreigners Act 1940 and the Registration of Foreigners Rule 1948.

Temporary Identification Certificates (TICs) or Temporary Registration Certificates (TRCs), also known as "the White Cards" were granted under Rule 13(1)(c) of the 1951 Registration of Residents in the Union of Myanmar Rules. Rule 2(e) defines a Temporary Identification Certificate as a certificate issued instead of a registration card and it represents a proof of identity valid for a certain period that is specified on the certificate. Temporary Identification cards are issued mostly to those who had no registration cards; who have remained to scrutinize citizenship according to the Myanmar Citizenship Law; who have been disqualified to scrutinize citizenship owing to incomplete documents; and who have not included to hold foreigner registration cards under the Registration of Foreigners Rules 1948.

On February 11, 2015, the Office of the President of Myanmar released Notification Number 19/2015, which declared that the Temporary Identification Card, also known as the White Card, had to be surrendered by May 31, 2015, as its validity had expired on March 31, 2015. The temporary identification cards were issued in 1995.² Out of the 759,672 temporary certificates disbursed, only 469,183 have been surrendered. With effect from June 1, 2015, instead of those temporary certificates, the distribution of an Identity Card for National Verification (NVC) was carried out. The main purpose of distributing those cards was to scrutinize them as to whether they were entitled to become a citizen under the provisions of the Myanmar Citizenship Law 1982 and to acknowledge them as residents in Myanmar. According to the President's Office, as of December 23, 2016, 32,016 people out of 469,183 who turned in their temporary certificates were given Identity Cards for National Verification.³

Modes of Acquiring Naturalized Citizenship

A stateless or noncitizen can apply for citizenship in a country through the legal process known as naturalization. To apply for and be granted citizenship is one of the most fundamental ways that immigrants can participate in their new society. This makes it possible for immigrants to fully engage in the legal and political institutions in society.⁴ In addition to serving as a means

¹ Norwegian Refugee Council, the Seagull and the Statelessness Network Asia Pacific, A Gender Analysis of the Right to a Nationality in Myanmar (March 2018), P.5.

² <https://www.moi.gov.mm>moi:eng>

³ www.president-office.gov.mm>rakhine...

⁴ James P. Lynch and Rita J. Simon, *Immigration the World Over: Statutes, Policies, and Practices*, Rowman & Littlefield Publishers, Inc., 2003, P.253.

of separating desirable from undesirable immigrants, citizenship creates a second gate that must be crossed by immigrants to become full members of the polity.¹

Under one of five conditions, naturalized citizenship can only be acquired by application in Myanmar. Acquisition of naturalized citizenship is stated in Sections 42, 43, 45, and 47 of the Myanmar Citizenship Law, 1982. First, people who have entered and settled in Myanmar before 4th January 1948, and their children born within Myanmar may, if they have not already applied under the Union Citizenship Act 1948, apply for naturalized citizenship; Second, a person born in or outside of Myanmar to parents, one of whose parents is either a citizen, associate citizen or naturalized citizen and the other is a foreigner; Third, a person born in or outside of Myanmar to parents, one of whose parents is an associate citizen and the other is a naturalized citizen or both of whom are naturalized citizens; Fourth, a child whose name is included in one of their naturalized citizen parents' certificates is a naturalized citizen; Fifth, a person who is holding a Foreigner's Registration Certificate married to a citizen or to an associate citizen or to a naturalized citizen, anterior to the date the Myanmar Citizenship Law, 1982 enters into force may acquire a naturalized citizen.

It is important to mention that the President of the State or the Union Government has the power to grant any person citizenship. Section 8(a) of the Myanmar Citizenship Law 1982 provides that the President of the State or the Union Government may, in the interest of the State, confer on any person citizenship or associate citizenship or naturalized citizenship.

The Situation of Conferring Naturalized Citizenship to Immigrants in Myanmar

Myanmar shares borders with China, Laos, Thailand, Bangladesh and India. Since gaining independence in 1948, Myanmar has unavoidably faced issues such as boundary and immigration due to its close borders. It is evident that the Kingdom of Arakan was ruled by the Rakhine, one of the indigenous people of Myanmar from 1430 to 1785. It included the region near the border between Myanmar and Bangladesh. The Kingdom of Arakan became part of Myanmar, which subsequently came under British colonial rule. Myanmar became independent of British rule in 1948. However, it wasn't until 1966 that the Nave River was designated as the boundary between Bangladesh (at that time, East Pakistan) and Myanmar. The Bangladeshi, Rakhine, and Bengali (the original Rohingya) people were able to freely move between the two countries until the border was drawn in 1966.²

According to the statement issued by the President's Office on 11 July 2012, President U Thein Sein said that Bengalis came to work in the agricultural sector in Myanmar because British colonialists had invited them there before the country gained independence from Britain in 1948. Some Bengalis settled here because it was convenient for them to do so, and Myanmar law allows for the granting of citizenship to the third generation of those who arrived before 1948. While some people are the younger generation of Bengalis who came before 1948, others are illegal immigrants claiming to be Rohingyas who pose a threat to the security of the State. The Government has been seriously looking for a solution to this problem. The country will take

¹ Rainer Bauböck, *Migration and Citizenship: Legal Status, Rights and Political Participation*, IMISCOE Reports, Amsterdam University Press, 2006, P.18.

² Sari K. Ishii, *Marriage Migration in Asia: Emerging Minorities at the Frontiers of Nation-States*, Kyoto University Press, 2017, P.190.

responsibility for its native people, but it is unable to accept Rohingya immigrants who are in the country illegally.¹

To address the issue of illegal immigrants, in July 2014 the Union Solidarity and Development Party (USDP) government introduced a pilot Citizenship Verification Process in Myebon Township. This process allowed Muslim TRC holders to apply for citizenship but stipulated that they had to list "Bengali" as their ethnicity. The process was halted as a result of protests and a planned process in Thet Kay Pyin IDP camp in Sittwe was never initiated due to rising tensions. But in January 2015, citizenship verification was restarted and was extended to the whole of Rakhine State. The government announced in February 2015 that all TRCs would be cancelled, and in June it started to issue NVCs in their place. The National League for Democracy (NLD) government restarted the process of issuing new documentation in June 2016. For the first time, recipients of the NVC were not required to identify as "Bengali" to receive them, and neither were ethnicity or religion criteria included in their issuance. Efforts to issue NVCs persisted intermittently after June 2016. About 2,000 people became citizens as a result of the first Myebon process; however, since the focus of the subsequent processes has been on issuing interim documents, relatively few people have become citizens.²

Qualifications for Naturalization

Every country usually determines eligibilities for naturalization depending on the applicant's age, language skills, residence requirements and the benefits of the state. In Myanmar, to be a naturalized citizen, an applicant shall have the following qualifications:

- (a) be a person who conforms to the provisions of Section 42 or Section 43;
- (b) have completed the age of eighteen years;
- (c) be able to speak well one of the national languages;
- (d) be of good character; and

(e) be of sound mind under Section 44 of the Myanmar Citizenship Law 1982. In addition to the above-mentioned facts, a person who is holding a Foreigner's Registration Certificate married to a citizen or to an associate citizen or to a naturalized citizen, anterior to the date this Law enters into force shall have the following qualifications:

- (a) have completed the age of eighteen years;
- (b) be of good character;
- (c) be of sound mind;
- (d) be the only husband or wife;

(e) have resided continuously in the State for at least three years as the lawful wife or husband.³

¹ Ashley South and Marie Lall, *Citizenship in Myanmar: Ways of Being in and from Burma (Myanmar)*, Chiang Mai University Press, 2018, P.241.

² Center for Diversity and National Harmony, *Myanmar's Citizenship Law: An Analysis*, August 2018, P. 218.

³ Section 45 of the Myanmar Citizenship Law 1982.

In the United States, an applicant must meet a few requirements before he/she applies for naturalization. Over the course of the nineteenth Century, Congress amended the naturalization laws several times to attach certain requirements, including lawful entry, enumerated years of continuous residence, intention to reside in the U.S. permanently, ability to write his or her name, ability to speak English, good moral character, and attachment to the principles of the U.S. Constitution.¹ Additionally, an official naturalization test was first implemented in 1986, and remained unchanged until 2006. In September 2007, United States Citizenship and Immigration Services (CIS) unveiled the final 100 questions to the new citizenship test, created to be “more standardized, fair, and meaningful”.² Persons who are unable because of physical or developmental disability or mental impairment can be exempted from civic knowledge and English language requirements.³

In Australia, the applicant must meet certain requirements, including lawful entry, permanent residency, having a basic knowledge of the English language, having an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship, and having good character, before making application to the Minister.⁴ The applicant requires to sit and pass the Citizenship test related to the eligibility criteria referred to in Section 21(2) (d), (e) and (f) of the Australian Citizenship Act, 2007 before making application to the Minister.⁵ If the applicant is under 18 years, or 60 years or over, or has a permanent physical or mental incapacity, he or she is not required to sit the citizenship test.⁶

Myanmar, unlike the United States and Australia, does not require the applicant to be a permanent resident to apply for naturalization. Naturalization in the United States and Australia requires the applicant not only to have civic knowledge but also to sit and pass the citizenship test. However, the civic knowledge requirement for naturalization and citizenship test are not mentioned in the Myanmar Citizenship Law. It should be noted that a noncitizen cannot acquire Myanmar naturalized citizenship through marriage to a Myanmar citizen, if such marriage is entered into after 15 October 1982. In addition, the Myanmar Citizenship Law 1982 expressly provides that a foreigner shall not acquire citizenship merely by marriage to a citizen. Likewise, a foreigner who is adopted by a citizen, or by an associate citizen, or by a naturalized citizen is not eligible for any of these three types of citizenship.

Rights and Responsibilities of a Naturalized Citizen

The rights and responsibilities of a Myanmar naturalized citizen are prescribed in Sections 53 to 56 of the Myanmar Citizenship Law 1982. A naturalized citizen shall respect and abide by the laws of the State; discharge the duties prescribed by the laws of the State; and be entitled to enjoy the rights of a citizen under the laws of the State except the rights stipulated from time to time by the President of the State or the Union Government.⁷ Furthermore, a naturalized citizen shall not acquire the citizenship of another country.⁸ A naturalized citizen

¹ Kevin R. Johnson, Raquel Aldana, Bill Ong Hing, Leticia M. Saucedo and Enid Trucios-Haynes, *Understanding Immigration Law*, Carolina Academic Press, 2nd Edition, 2015, P.626.

² *Ibid*, P. 631.

³ Section 312(b)(1) of the U.S. Immigration and Nationality Act of 1952.

⁴ Section 21(2) of the Australian Citizenship Act 2007.

⁵ Section 23A, *Ibid*.

⁶ Section 21(3), (4) and (5), *Ibid*.

⁷ Section 53 of the Myanmar Citizenship Law 1982.

⁸ Section 54, *Ibid*.

shall have no right to divest himself of his naturalized citizenship during any war in which the State is engaged.¹ A naturalized citizen shall not automatically acquire citizenship or associate citizenship merely by marriage to a citizen or to an associate citizen.² A naturalized citizen is entitled to enjoy the rights of a citizen under the laws of the State, but there are some differences. Naturalized citizens are eligible to vote at the elections; however, they are not eligible to stand for election to the Pyithu Hluttaw³ or the Amyotha Hluttaw⁴ respectively.

Every citizen has the right to elect and right to be elected to the Pyithu Hluttaw, the Amyotha Hluttaw, and the Region or State Hluttaw subject to the Constitution and relevant laws in accord with Section 369(a) of the Constitution of the Republic of the Union of Myanmar 2008. Section 7(f) of the Pyithu Hluttaw Election Law provides that a foreigner or person who has assumed foreign citizenship shall not be eligible to vote at the election. All citizens have the right to elect and the right to be elected to the different Hluttaws, but foreign nationals have no right to vote in elections. Elections are held in Myanmar every five years. Every citizen is entitled to vote, including associated citizens and naturalized citizens. In addition to these three types of citizens, temporary certificate (white card) holders had voted in the 2008 referendum for the adoption of the constitution of the state. On 10 February 2015, the Pyidaungsu Hluttaw passed the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar (2008) by Law No. 2/2015. Section 11(a) of this Law provides that every citizen, associate citizen, naturalized citizen and temporary certificate holder who has completed the age of eighteen years on the day of referendum shall have the right to vote at the referendum. Regarding the right to vote of temporary certificate holders, the representatives of the Amyotha Hluttaw headed by Rakhine National Party leader U Aye Maung submitted the case to the Constitutional Tribunal.⁵

The Constitutional Tribunal decided that a temporary certificate holder included in Section 11(a) of the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar (2008) means a person who holds a certificate issued instead of a registration card and it represents a proof of identity valid for a certain period that is specified on the certificate under Rule 2(e) of the 1951 Registration of Residents in the Union of Myanmar Rules. On 11 February 2015, the Office of the President of Myanmar issued a Notification Number 19/2015 declaring that the validity of the Temporary Identification Card or White Card expired on 31 March 2015 and that cards were to be surrendered not later than 31 May 2015. Accordingly, the temporary certificate card has expired and the validity of the temporary certificate holder has been declared void according to the above-mentioned notification, the provision mentioned in the Law that temporary certificate holders are eligible to vote is no longer in effect.⁶

Moreover, a temporary card holder issued under Rule 13(1)(c) of the 1951 Registration of Residents in the Union of Myanmar Rules means a person who has remained to scrutinize

¹ Section 55 of the Myanmar Citizenship Law 1982.

² Section 56, *Ibid.*

³ Section 10(m) of the Pyithu Hluttaw Election Law 2010.

⁴ Section 10(m) of the Amyotha Hluttaw Election Law 2010.

⁵ The Republic of the Union of Myanmar, Constitutional Tribunal of the Union: 2015 Rulings, 1st Edition, 2016, P.49.

⁶ The Republic of the Union of Myanmar, Constitutional Tribunal of the Union: 2015 Rulings, 1st Edition, 2016, P.49.

citizenship and if he was allowed to vote together with citizens in the referendum, such allowing to vote is not consistent with the provisions of Section 38(a) and Section 391(a) and (b) of the Constitution of the Union of Myanmar (2008). Therefore, it is held that the provision mentioned in Section 11(a) of the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar (2008) that temporary certificate holders are eligible to vote at the referendum is inconsistent with the provisions of the Constitution of the Union of Myanmar (2008).

On 25 June 2015, the Pyidaungsu Hluttaw enacted the Law Amending the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar (2008) by Law No. 36/2015. Section 11(a) of the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar, (2008) was substituted by Section 2 of the Law Amending the Referendum Law for the Approval of the Draft Constitution of the Republic of the Union of Myanmar (2008). Accordingly, each of every citizen, associate citizen, and naturalized citizen who has completed the age of eighteen years on the day of the referendum is eligible to vote at the referendum. It should be noted that every citizen including citizens, associate citizens, and naturalized citizens has the right to vote in elections, but foreign nationals are not allowed to vote in the elections.

In Thailand, a naturalized citizen can benefit from the same rights and duties as a Thai citizen. However, a person who has acquired Thai nationality by naturalization does not gain the right to vote until five years after naturalization.¹ Moreover, naturalized citizens have no right at all to stand for election to the House of Representatives² or the Senate.³ Immigrants have no right to vote in elections.

Removal of Naturalized Citizenship

Removal of naturalized citizenship is outlined in Sections 8(b), 50, 51, 52, 57, 58, 59, and 60 of the Myanmar Citizenship Law 1982. A naturalized citizen who leaves the State permanently, who acquires the citizenship of or registers himself as a citizen of another country, or who takes out a passport or a similar certificate of another country ceases to be a naturalized citizen. If a person married to a citizen or to an associate citizen or to a naturalized citizen, who is holding a Foreigner's Registration Certificate anterior to the date this Law comes into force applies for naturalized citizenship and the husband or wife of such a person dies or is divorced from such a person before acquiring naturalized citizenship, the application for naturalized citizenship of such a person shall lapse.

Where one of the parents is a citizen, an associate citizen, or a naturalized citizen and the other a foreigner, and if the mother or father who is a citizen, an associate citizen or naturalized citizen loses her or his citizenship, associate citizenship, or naturalized citizenship, the children included in the certificate held by her or him, who have not completed the age of eighteen years, and the children included in the certificate held by her or him, who have completed the age of eighteen years, but have not made an affirmation cease to be naturalized citizens. Where both the parents lose their naturalized citizenship, the children included in their certificate of naturalized citizenship, who have not completed the age of eighteen years and the children included in their

¹ Section 95 of the Thailand's Constitution of 2017.

² Section 97 of the Thailand's Constitution of 2017.

³ Section 108, Ibid.

certificate of naturalized citizenship, who have completed the age of eighteen years, but have not made an affirmation cease to be naturalized citizens. If affirmation is not possible within one year, an application may be submitted to the Central Body through the organizations prescribed by the Ministry of Immigration and Population, providing adequate reasons. If he does not have a sufficient explanation after reaching the age of twenty-two years, he shall lose his naturalized citizenship.

Dealing with revocation of citizenship, the President of the State or the Union Government may, in the interest of the State, revoke the citizenship or associate citizenship or naturalized citizenship of any person other than a citizen by birth. Section 59 of the Myanmar Citizenship Law, 1982 prescribes that a naturalized citizen who has obtained such citizenship through false representation or concealment shall have his naturalized citizenship revoked and shall also be liable to imprisonment for a term of ten years and to a fine of kyats fifty thousand. Under Section 60 of the Myanmar Citizenship Law, 1982, a naturalized citizen who has abetted in a fraudulent acquisition of a certificate of citizenship, a certificate of associate citizenship, or a certificate of naturalized citizenship for another person shall have his naturalized citizenship revoked, as well as be liable to imprisonment for a term of seven years and a fine of kyats ten thousand.

Section 58 of the Myanmar Citizenship Law, 1982 provides that if a person violates any of the following provisions, the Central Body may revoke his naturalized citizenship: (a) trading or communicating with enemy countries or countries assisting the enemy country, or with citizens or organizations of such countries during a war in which the State is engaged, or abetting such an act; (b) Trading or communicating with a hostile organization or a member of such an organization, or abetting such an act; (c) committing an act that is likely to threaten the State's sovereignty and security, or public peace and order, or giving cause to a reasonable belief that he is about to conduct such an act; (d) demonstrating disaffection or disloyalty to the state through any act, speech, or other means; (e) giving information relating to a state secret to any individual, organization, or other country or countries, or abetting such an act; (f) committing a moral turpitude offence for which he was sentenced to imprisonment for a minimum of one year or a fine of kyats one thousand.

Result and Findings

The Myanmar Citizenship Law, 1982 provides three types of citizenship: citizens, associate citizens, and naturalized citizens. Naturalized citizenship can only be acquired by application via one of five criteria. Myanmar is a strict *jus sanguinis* state, so a child born in Myanmar whose parents are noncitizens will not be eligible for Myanmar citizenship. A noncitizen cannot acquire naturalized citizenship through marriage to a Myanmar citizen, if such marriage is entered into after 15 October 1982. A foreigner who is adopted by a citizen, by an associate citizen, or by a naturalized citizen is not eligible for any of these three types of citizenship. Furthermore, immigrants in Myanmar, especially the third generation of Bengalis who arrived before 1948 can be granted naturalized citizenship. Regarding the qualifications for naturalization, an applicant for naturalized citizenship in Myanmar needs not to be a permanent resident. The Myanmar Citizenship Law, 1982 does not mention civic knowledge requirement and citizenship test, although it provides a national language requirement for naturalization. In connection with the rights of naturalized citizens, a naturalized citizen is entitled to enjoy the rights of a citizen under the laws of the State, but there are some differences. A significant

difference between the rights of a citizen and the rights of a naturalized citizen is eligible to stand for election to the Hluttaws. In the case of immigrants' voting rights, immigrants have not been allowed to vote in elections since 2015. Myanmar's naturalized citizenship may be revoked on account of obtaining naturalization illegally through the concealment of a material fact or willful misrepresentation, and obtaining naturalization in another country. In addition, a child's naturalized citizenship may be revoked where one of their parents, or parents have lost naturalized citizenship. States have the authority to determine who is allowed to enter their territories, for how long, from which countries, and what rights to provide to them in their laws. Depending upon the national interest of States, their immigration laws are different from each other.

Discussion

The current study excludes the immigration control of legal immigrants in Myanmar. Myanmar does not have a system to accept immigrants with permanent resident permits at the time of entrance. A person who has entered the country with a type of visa that is not entitled to settle can apply for permanent resident status after three years. Myanmar does not allow a permanent resident to acquire naturalized citizenship. It can be seen that further studies are needed in the fields of immigration control of legal immigrants and the national verification process after June 2016.

Conclusion

It is observed that Myanmar only grants naturalized citizenship to a noncitizen who meets certain requirements under the Myanmar Citizenship Law 1982 and a noncitizen married to a citizen or to an associate citizen or to a naturalized citizen, who is holding a Foreigner's Registration Certificate anterior to the date the Myanmar Citizenship Law 1982 comes into force. Regarding immigrants, especially the third generation of Bengalis who arrived before 1948 can be granted Myanmar citizenship. It is recommended that, in determining the citizenship of immigrants, the citizenship knowledge requirement and the citizenship test should be added to the Myanmar Citizenship Law 1982 in the national interest of the state.

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