

School of Law

**Kirby Cup**

**High School Mooting Competition 2016**

**Moot Problem**

Mrs Anna Mannocci

**Applicant**

V

Minister for Immigration and Border Protection

**Respondent**

Before

Administrative Appeals Tribunal

1. Mrs Anna Mannocci (the Applicant), who is forty-five years old is a citizen of Italy who, in 1999, married John Peter Samuels, an Australian citizen. The Applicant is a permanent resident of Australia and applied for citizenship on 14 June 2015.
2. Being a permanent resident means that the Applicant is on a visa, has to renew the visa every year, has to pay fees in order to renew that visa, and may be subject to refusal of the visa. Being an Australian citizen means that the Applicant may come and go from Australia as she pleases without the need for a visa application or fees.
3. A delegate of the Minister for Immigration and Border Protection (Minister), refused her application for citizenship on 21 August 2015, on the basis that she did not satisfy sections 21(2)(c) and 21(2)(g) of the *Australian Citizenship Act 2007* (Cth) (Citizenship Act).
4. As the Applicant did not satisfy the general residence requirement, the delegate gave consideration to the discretion in section 22(9)(d) of the Citizenship Act. That discretion was not exercised in the Applicant’s favour because it was considered she did not have a close and continuing association with Australia during her periods of absence from Australia in the four years immediately before her citizenship application.
5. The Applicant has exercised her rights to apply for a review of that decision to the Administrative Appeals Tribunal (the Tribunal). The application concerns whether the discretion in s 22(9) of the Citizenship Act should be exercised so as to treat any of the Applicant’s periods of absence from Australia, in the four years immediately before she applied for Australian citizenship, as periods in which the Applicant was present in Australia as a permanent resident with the consequence that she satisfies the general residence requirement in section 22(1) of the Citizenship Act, and is eligible to become an Australian citizen by conferral under section 21(2) of the Citizenship Act.
6. The Applicant was only physically present in Australia for a total of 38 days and absent from Australia for 1,423 days in the four years immediately before the citizenship application, which exceeds the 12 months allowable absence, she did not meet the general residence requirement.
7. Overall, the longest period the Applicant spent in Australia was 98 days from 22 December 2006 to 28 March 2007, which is outside the relevant period, and that otherwise, she has only ever spent short periods in Australia. Accordingly, she cannot satisfy the general residence requirement in section 22(1)(c) of the Citizenship Act, unless a discretion in section 22(9) is exercised in her favour.
8. The Applicant is a citizen of Italy who first arrived in Australia on 11 June 1998, on a subclass 676 (Tourist) visa. On 3 May 1999, she was granted a subclass 309 (Partner) temporary visa, and she became a permanent resident on 30 September 2001.
9. The Applicant was granted a subclass 155 (resident return) visa on 29 November 2006, which was renewed on 21 May 2011 and is valid to 21 May 2016.
10. As previously noted, the Applicant married John Peter Samuels in 1999, and they have two children, L, born in 2003 and adopted from Chile, and F, born in 2009. Both children are Australian citizens (given their father is an Australian).
11. Mr Samuels’ work in the construction industry has taken him to various places in the world, many in Asia. He is currently posted in Macau where the family lives. The Applicant has a love of Australia.
12. The Applicant worked with the Australian Embassy in Italy from 27 December 1995 to 12 March 1997.
13. Because of her husband’s employment situation, the Applicant has not spent a lot of time in Australia.
14. The Applicant was physically present in Australia for only 38 days and absent for 1,423 days in the four years immediately before applying for citizenship on 14 June 2015. Further, she was not present in Australia at all as a permanent resident in the period of 12 months immediately before the date of her application for citizenship on 14 June 2015.
15. The Applicant has only spent short periods of time in Australia. Her one long stay was from 22 December 2006 to 28 March 2007.
16. It is common ground that the Applicant meets the requirement of section 22(9)(a)-(c) of the Act in that she is the spouse of an Australian citizen, Mr. Samuels, during the period relevant to her application, and that she is a permanent resident, absent from Australia during the relevant period.
17. However, her application was refused by section 22(9)(d) of the Citizenship Act because the Minister was not satisfied that she had a close and continuing association with Australia during that period. That close and continuing association with Australia is considered during any or all of the periods in which the Applicant was absent from Australia in the four years immediately before her citizenship application for the purposes of s 22(9)(d) of the Citizenship Act.
18. The Applicant has worked with the Australian Embassy in Italy and has learnt about Australian culture, and completed remedial massage with a view to employment in Australia. However, the Applicant has never migrated to and established a home in Australia before the period overseas. She met her husband in Italy while she was working there at the Australian Embassy.
19. The Applicant is not close to Mr Samuels’ family. However, the Applicant has emotional ties with Australia, as some of her friends are Australians. Unfortunately, the Applicant lost contact with her old friends from the Australian Embassy in Italy where she worked before she met her husband.
20. Mr Samuels and the Applicant own two properties in Australia, including one on the Central Coast of NSW where they intend to reside from 2017. The couple plans to live a more relaxed lifestyle in their house on the Central Coast and plan for their two children to attend school in Australia.
21. The Applicant has never resided in Australia or been employed here. By way of contrast, she does engage the services of Australians, real estate agents who assist with managing the properties she owns jointly with Mr Samuels, and the services of a tax agent, an accountant, and other advisors.
22. Mr Samuels and the Applicant have about $20,000 in various investments in Australia, excluding their two residential properties (which have a combined value of about $820,000). The Applicant pays insurance, tax and operates bank accounts jointly with her husband associated with Australia. In connection with the jointly owned properties, the Applicant, and her husband pay water and council rates and land tax.
23. The Applicant and her husband pay income tax annually in Australia. However, the couple only spends a limited amount on tax.
24. In light of the preceding facts, the Tribunal seeks submissions for resolution of the following two questions:
25. **Whether under section 21(2)(g) of the Citizenship Act, the Applicant is likely to reside in, or to maintain a close and continuing association with Australia if the application is approved; and**
26. **Whether the Applicant had a close and continuing association with Australia in the periods in which she was absent from Australia in the four years immediately before the Citizenship Application under section 22(9)(d) of the Citizenship Act.**

**Relevant materials**

* *Trang Tran v Minister of Immigration and Border Protection* [2014] AATA 957
* Sections 21 and 22 *Australian Citizenship Act 2007* (Cth), extracts, see below.

***Australian Citizenship Act 2007* (Cth) - Section 21 (extract)**

**21 Application and eligibility for citizenship**

…

General eligibility

(2) A person is eligible to become an Australian citizen if the Minister is satisfied that the person:

…

(g)  is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia if the application were to be approved…

***Australian Citizenship Act 2007* (Cth) - Section 22 (extract)**

**22 General residence requirement**

…

Ministerial discretion--spouse, de facto partner or surviving spouse or de facto partner of Australian citizen

(9) If the person is the spouse, de facto partner or surviving spouse or de facto partner of an Australian citizen at the time the person made the application, the Minister may treat a period as one in which the person was present in Australia as a permanent resident if:

(a) the person was a spouse or de facto partner of that Australian citizen during that period; and

(b) the person was not present in Australia during that period; and

(c) the person was a permanent resident during that period; and

(d) the Minister is satisfied that the person had a close and continuing association with Australia during that period.