

CITIZENSHIP — SOME PACIFIC REALITIES

by

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and

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1. Introduction

Citizenship and the rights that flow from it are of major significance to states and individuals in the contemporary world. This importance was recognised in the Universal Declaration of Human Rights in articles 13 and 15. It is declared in article 15 (1) that “Everyone has the right to a nationality”.

For the states parties to the international documents that have followed the Declaration, the rules in articles 12 and 24 of the International Covenant on Civil and Political Rights address in a positive form articles 13 and 15 of the Declaration. Article 24 (3) of the Covenant says “Every child has the right to acquire a nationality”. Citizenship has also been the focus of much discussion in the implementation of the International Convention on the Elimination of all Forms of Discrimination Against Women.

For most states in the world there is no difficulty in providing the internationally prescribed rights. They are more than adequately covered by statutory provisions providing for citizenship as of right flowing from birth or from descent. In many cases it is access to the benefits that flow from the right — the delivery of the right — that presents the difficulty. Particularly good examples of the problems that occur or might occur in this field of law can be seen in the Pacific region. The typical Pacific community is a small, isolated and inaccessible one.

In order to provide something of a focus for consideration of the question of access to citizenship rights, this paper considers the position in Tokelau¹ of those who seek to exercise their citizenship rights and of those who, though not citizens, are members of the community who seek to acquire citizenship rights by the discretionary grant of citizenship.

Tokelau is in the unique constitutional position of being an internal part of New Zealand² with its own legal system. It has no legislative or executive independent of New Zealand³. Tokelau is also a dependent territory for the purposes of self determination under United Nations guidelines⁴. The sources of law for Tokelau are found in the *Tokelau Act 1948*

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1. Tokelau comprises 3 small coral atolls situated about 300 miles north of Western Samoa. The population of approximately 1700 is distributed among the 3 atolls. It is a subsistence economy. Access to Tokelau is six-weekly from Western Samoa by a cargo boat which also provides the only means of access between the individual atolls. An inter-atoll vessel is due for commissioning late in 1991.

2. Section 3, *Tokelau Act 1948*.

3. Although the constitutional position of Tokelau is frequently confused with that of the Cook Islands and Niue, it is not the same. The Cook Islands and Niue are both states in free association with New Zealand.

4. In 1946 Tokelau was put forward by New Zealand to be placed on the list of Non-Self Governing Territories as a dependent Territory administered by New Zealand (General Assembly Resolution 66(1) of 14 December 1946). In 1962, with New Zealand's agreement, Tokelau was placed on the list of Territories (General Assembly Official Records, eighteenth Session, Annexes, addendum to agenda item 23 A/5446/ Rev 1. 288-289) governed by the Declaration of the Granting of Independence to Colonial Countries and Peoples (Resolution 1514 (xv) of 14 December 1960).

(NZ) and include New Zealand statutes which have been expressly extended to Tokelau⁵.

The *Citizenship Act 1977* (NZ) is one of the New Zealand statutes which has been expressly extended⁶ to Tokelau and its application there provides the basis for the topics discussed in this paper.

2. *The Citizenship Act 1977* (NZ) and its Application to Tokelau

The Citizenship Act 1977 (NZ) came into force on 1 January 1978 and repealed the *British Nationality and New Zealand Citizenship Act 1948* (NZ). The *Citizenship Act 1977* (NZ) defines New Zealand to include Tokelau.⁷ The Act states that persons born in New Zealand after 1 January 1949 are New Zealand citizens by birth.⁸ Persons born outside New Zealand after 1 January 1978 will be New Zealand citizens by descent if at the time of their birth one or both parents held New Zealand citizenship other than by descent.⁹

The Act provides that persons born outside New Zealand between 1 January 1949 and 1 January 1978 are New Zealand citizens by descent if at the time of birth the person's father was a New Zealand citizen, or in the case of a person born after 1 January 1970, the mother of the person was a New Zealand citizen.¹⁰ This latter provision is transitional and relates back to the *British Nationality and New Zealand Citizenship Act 1948* (NZ) under which descent claims were through the male line. To remedy the position for those born between 1949 and 1978, whose claim would be based on their mother's New Zealand citizenship, the *Citizenship Act 1977* (NZ) provides for applications for a grant of citizenship.¹¹

The claiming of citizenship and, for Tokelau, the closely related matter of obtaining a New Zealand passport¹² are made very difficult by the physical isolation of the territory.

Until recently there was no one in any of the villages who could provide information on the citizenship or passport law, the requisite forms were not available, there were no photo taking facilities and, in terms of the making of the required statutory declarations and oaths, there was typically no one present in the community with the status required by those laws.

For those who wished to travel out of Tokelau the appropriate procedure was to take the boat to Apia in Western Samoa and have the matters attended to through the office of the New Zealand High Commission in Apia.

Most persons who were travelling on official business or going abroad for educational purposes had the necessary documentation attended to through the Office for Tokelau Affairs in Apia.¹³ Those less fortunate had to attend to the matters themselves and would frequently be in Apia for lengthy periods trying to acquire the necessary documents and to complete the formalities. Often for reasons related to the environment the necessary birth and marriage certificates were not available. Those who were unable to resolve the issues simply returned to Tokelau in due course and were effectively isolated there.

The use of the New Zealand High Commission in Western Samoa for these purposes was facilitated by the attitude of the Western Samoan authorities. They permitted people from Tokelau to travel to Western Samoa without standard international documentation. The

5. *Tokelau Act 1948*, section 6.

6. Section 29(3) of the *Citizenship Act 1977*. See also *Citizenship (Western Samoa) Act 1982* (NZ).

7. Section 2(1).

8. Section 6.

9. Section 7.

10. Section 13(3).

11. Section 10.

12. *The Passports Act 1980* (NZ) is not Tokelau law.

13. The Office for Tokelau Affairs in Apia, Western Samoa provides the administrative government of Tokelau and the headquarters for the Tokelau Public Service.

travel ticket for the boat was the sole documentation required. Onward passage from Western Samoa was however not possible without internationally accepted documentation.

In recent years the attitude in Western Samoa to immigration administration changed with the pressures of increased international traffic and there was a formalising of immigration procedures. It then became necessary for those travelling to and from Tokelau to have better documentation. A *modus vivendi* was however worked out with the Government of Western Samoa in respect of Tokelauans who wanted to travel to Western Samoa. The Tokelau Administration in conjunction with the Government of Western Samoa established an identity document for the purposes of travel between Tokelau and Western Samoa. The issuance of that document and the increased formality in the immigration procedures of Western Samoa effectively prevented non-Tokelauans in Tokelau from moving out if they were not holders of proper international documentation.

The result of these and other pressures has been that the Tokelau officials on each of the islands is now sufficiently informed to give information to people on the islands about New Zealand citizenship and passports, and the necessary forms are available. An official of the Tokelau Administration visits the islands regularly with a polaroid camera and necessary photographs can also be provided. Additionally the law in respect of oaths and declarations has been completed¹⁴ and administrative measures put in place for officials on the islands to witness the signatures.

Until these recent changes the New Zealand citizen, or the applicant for New Zealand citizenship or a New Zealand passport, in Tokelau, was very much in the position of someone outside of New Zealand having to apply through a New Zealand diplomatic post in foreign parts. The most recent administrative and legal changes go a long way to putting the people in Tokelau in a position as similar as is geographically possible to others who live within metropolitan New Zealand.

In practice the main problems for Tokelau in respect of New Zealand citizenship have flowed from the geographical isolation of Tokelau. The extension of the *Citizenship Act 1977 (NZ)* to Tokelau is however itself not without legal difficulty.

3. Specific Legal Issues Raised by the *Citizenship Act 1977 (NZ)*

Specific legal issues have arisen under the *Citizenship Act 1977 (NZ)* relating to applications by—:

- (i) Persons who have a close connection with Tokelau, who are not known to be New Zealand citizens. This includes people who have established citizenship in respect of another country and those who have no passports. Such applications typically rely on any or all of the following facts:—
 - marriage to a New Zealand citizen
 - long term residence in Tokelau
 - employment in the Tokelau Public Service in Tokelau.
- (ii) Persons whose applications are based on Crown service in respect of Tokelau but outside of Tokelau.
- (iii) Children of Tokelau public servants.

Most of the problems arise under s. 8 of the *Citizenship Act 1977 (NZ)*.¹⁵

(a) Close Connection with Tokelau

14. *Tokelau Affidavits and Declarations Regulations 1986*. Previously the citizenship applications required 2 different forms of witnessing, neither of which could ordinarily be satisfied in Tokelau before the promulgation of the *Tokelau Affidavits and Declarations Regulations 1986*.

15. See the Appendix to this paper.

An example illustrates the possible problems.

Applicant A was born in a neighbouring state, has lived on Tokelau for 12 years and has been continually employed on Tokelau by the Tokelau Public Service. He is married to a New Zealand citizen by descent, and has two children. A is an active and respected member of the Tokelau community, has been fully accepted into that community, and he intends to continue residing there.

Under the *Citizenship Act 1977 (NZ)* there are at least two grounds on which A would be eligible for consideration for New Zealand citizenship. He appears to fulfil the grounds in s.9 and in particular is married to a New Zealand citizen. The more interesting ground is in s.8 of the Act which raises the issue of whether residence in Tokelau for a period of longer than 3 years satisfies s.8(2)(a) of the Act. On a literal reading of the section and the definition of New Zealand, the answer would appear to be yes. The problem with that interpretation arises in respect of s.8(2)(b). The meaning of s.8(2)(b) is not apparent from the *Immigration Act 1987(NZ)*. One view is that the effect of s.8(2)(b) is to exclude residence in Tokelau from satisfying s. 8(2)(a) of the *Citizenship Act 1977 (NZ)* because it requires residence in metropolitan New Zealand.

Such a view does not make sense in the Tokelau situation. Section 8(2)(b) requires an applicant to be "... entitled, in terms of the *Immigration Act 1987*, to be in New Zealand indefinitely". Reading s.8 as Tokelau law requires an applicant to be "... entitled, in terms of the *Immigration Act 1987*, to be in Tokelau indefinitely". *The Immigration Act 1987 (NZ)* is not however Tokelau law and it cannot authorize entry into Tokelau or entitle anyone to live indefinitely in Tokelau.

Tokelau law was probably not envisaged when s.8(2)(b) was drafted. Therefore the condition is either irrelevant in this situation or has to be applied by analogy from Tokelau law. The only possible Tokelau law applicable is the *Tokelau Immigration Regulations 1991*¹⁶ which comprehensively covers entry to, residence in and removal from Tokelau.

To interpret s.8(2)(b) to require residence in metropolitan New Zealand would negative the effect of s.8(2)(a) and the role of the *Citizenship Act 1977 (NZ)* as Tokelau law. There is therefore an argument that s.8(2)(b) cannot properly be used as a ground for rejecting citizenship applications based on residence in Tokelau unless that residence was unlawful under the Tokelau law.

A further ground in s.8 on which applicant A could base his application is employment in the Tokelau Public Service; that is discussed in more detail in the next section of this paper.

16. On 1 August 1991 these regulations repealed the obsolete *Aliens Immigration Restriction Ordinance No 6 of 1924*, *Western Pacific High Commission Gazette Supplement* 29 October 1924. The *Tokelau Immigration Regulations 1991* serve not only to control access to Tokelau as a matter of administration, but also because they depend on the international notion of nationality and on citizenship papers. The regulations confront customary attitudes and aspirations with the requirements of the contemporary international movement of people. In Tokelauan traditional thinking what entitles a person to be in Tokelau is their link with it and their acceptance by the community; in essence if they are Tokelauan they have a right to be there. From a Western legal point of view if a person is a New Zealand citizen that person too has a right to be in Tokelau. At one level then the Tokelauan community sees being Tokelauan as synonymous with being a New Zealand citizen. This raises a number of problems because from the legal point of view there will be a number of ethnic Tokelauans who are not New Zealand citizens. Equally the spouses of Tokelauans who are New Zealand citizens would be regarded by the community as Tokelauans and therefore entitled to remain in Tokelau as any other Tokelauan. The law on the other hand focuses on that spouse's citizenship and not on their ethnic or community affiliations. This lack of coincidence of the two approaches to the matter is largely accommodated in the new regulations by the specific provisions which relate to the right to be in Tokelau of Tokelauan New Zealand citizens and the different rights of New Zealand citizens who are not Tokelauans, to be there. In its promotion of the immigration regulations the community was quite clear that regulations should not hinder access to the community by Tokelauans who were not New Zealand citizens nor by the spouses of Tokelauans. Those specific cases will under the regulation be accommodated by exercise of administrative discretion and the issuance of special permits.

Applicant B is a Western Samoan citizen married to a Western Samoan. The applicant's mother was born in Tokelau, but at the time of the applicant's birth, Tokelau was not part of New Zealand and a descent claim cannot be satisfied. Applicant B has been living in Tokelau since 1972 and during that time has been continuously employed by the Tokelau Public Service in Tokelau. Like applicant A, B is an active and respected member of the community and intends to continue to reside in Tokelau. In the case of B, the main ground for an application is residency. Acceptance of his application for consideration is also dependent on the interpretation given to s.8(2)(a).

The cases of applicants A and B highlight the problem of a number of persons living in Tokelau and who have no claims based on descent. Despite the fact that these people are respected and accepted members of the community one interpretation of the Act suggests such people have no claim to citizenship of the country in which they have chosen to live and are employed.

(b) Crown Service under the New Zealand Government

The issue of an application based on Crown service also arises under s.8. It is potentially present in the cases of applicants A and B, but was particularly of interest in a series of applications for New Zealand citizenship made under s.8 of the *Citizenship Act 1977 (NZ)* by long term employees in the Tokelau Public Service who were Western Samoan citizens based in Western Samoa. They sought the grant of citizenship on the basis of their Crown service under the New Zealand Government for a period of more than 3 years. Problems arise in respect of Government service in lieu of residence covered by ss.8(2)(a), 8(2)(f)(ii), 8(3), and 8(2)(b).

Such applicants would clearly not fulfil the requirements of actual residence in s. 8(2)(a). They clearly would fulfil the requirements of s.8(3) if it was established that an applicant who had spent 3 years preceding the application in the employment of the Tokelau Public Service was in ". . . Crown service under the New Zealand Government". There would seem, despite doubts sometimes expressed at an administrative level, to be no doubt that this condition is satisfied. The phrase is defined in the *Citizenship Act 1977 (NZ)*:

"Crown service under the New Zealand Government" means the service of the Crown under the Government of New Zealand or under the Government of a New Zealand mandated territory or New Zealand trust territory, whether that service is in any part of Her Majesty's realms and territories or elsewhere . . .¹⁷

This together with the definition of "New Zealand" is a far more wide-ranging reference than simply to service in a metropolitan Government Department. One visible indication of Tokelau's position in the New Zealand system is the presence of the New Zealand coat of arms on the Tokelau Administration letterhead and the role of the New Zealand State Services Commission as the employer of the members of the Tokelau Public Service.

Tokelau is part of the unitary State of New Zealand, and Tokelau's separate legal system does not alter the constitutional situation of Tokelau vis-a-vis the Head of State.¹⁸ There is one Crown, one Governor-General for the two legal systems and the administration of Tokelau is directly within the hierarchical structure of New Zealand Government under the Crown, and the responsible Minister is the Minister for External Relations and Trade. The Tokelau Public Service is within that system and an employee of that service is therefore necessarily in Crown service under the New Zealand Government.

Additionally, since under the *Citizenship Act 1977 (NZ)* New Zealand includes Tokelau,

17. Section 2(1).

18. See Letters Patent Constituting the Office of Governor-General of New Zealand, *New Zealand Statutory Regulations* 1983/225.

the phrase "Crown service under the Government of New Zealand" could theoretically be read there as Crown service under the "Government of Tokelau". The applicant could then satisfy s.8(2)(f)(ii) by stating an intention to continue in Crown service under the New Zealand Government, in the Tokelau Administration.

A further issue is the application of s.8(2)(b) in such cases. One view is that s.8(2)(b) would be a stumbling block to such applications because it cannot be fulfilled by someone who is not in New Zealand or Tokelau. Another view is that the subsection can have no relevance to such applications because it would negative the role of deemed residence provided for by s.8(3) and s.8(2)(f)(ii).

The matter is of considerable interest because this latter interpretation of ss.8(2)(b), and 8(3) and 8(2)(f)(ii) opens the way to applications by locally recruited employees at New Zealand diplomatic posts. Whether this consequence is desirable is a moot point. What is clear is that the provisions of the *Immigration Act 1987*(NZ) should not be used to render nugatory the provisions of the *Citizenship Act 1977* (NZ).

(c) Children of Tokelau Public Servants

The question of citizenship arises also in another context concerning the members of the Tokelau Public Service.

In this instance it concerns the New Zealand citizen Tokelauan members of the Service. For logistic reasons the offices of the Tokelau Public Service and the Tokelau Administration are in Apia in Western Samoa. The Tokelau Administration is greatly facilitated in its operation at a number of levels by the attitude of the Government of Western Samoa. The Tokelau Administration does not however have any official status, corporate status, or diplomatic immunity for its agents. It is very much like a government in exile.

A consequence of this is that Tokelau public servants at all levels, and particularly those at senior levels, are by virtue of their occupation required to live in Apia. Their children are born there and their grandchildren are also often born there. The position of the children of New Zealand civil servants posted abroad is that of a New Zealand citizen by virtue of the first degree descent rules. The descent of citizenship however stops at that stage and grandchildren have no right by dint of descent. In the case of Tokelau civil servants the grandchildren will therefore prima facie be Western Samoan citizens. The *Citizenship Act 1977* (NZ) does however make specific provision for the children born to public servants posted abroad.¹⁹ Given that Tokelau public servants are New Zealand public servants within the context of the *Citizenship Act 1977* (NZ) there is now no difficulty. The status of Tokelauan public servants' children born before 1 December 1988 is being handled administratively by the exercise of discretionary power to produce the same effect as the current law.

4. Birth in "Tokelau"

The law of Tokelau does at one other point address the difficult question of how to deal

19. Section 6 (4). (Effective from 1 December 1988):

(4) Notwithstanding section 7 of this Act, a person born outside New Zealand shall be deemed to be a New Zealand citizen otherwise than by descent if that person's father or mother is then—

(a) A New Zealand citizen, or a New Zealand citizen by descent, pursuant to this Act; and
(b) Either—

...

(ii) A public servant or serviceman (within the meaning of section 2 of the *Defence Act 1971*) on service overseas;

...

with persons born abroad to Tokelauans. The legislation in question is the Tokelau Births and Deaths Registration Regulations 1969. Regulation 15 provides that in certain specified circumstances a Tokelauan born abroad may be registered as born in Tokelau.²⁰ The administrative practice under this provision is for the child registered to be registered as having been born in the village of registry. The consequence that flows from this practice is that the child is a person born in New Zealand for the purposes of the *Citizenship Act 1977* (NZ). An alternative interpretation is that while the birth may be registered in Tokelau the birth certificate should record the actual place of birth as the place of birth.

The intention of the regulation was probably to enable Tokelauans to maintain identity with their island of family connection where they were born abroad in circumstances or places where the birth may not have been registered or registrable — a place from which a birth certificate could not in future be obtained.

At a cultural level the identity factor is being Tokelauan and to the extent that the law uses nationality or citizenship as an identifying element the Tokelau communities would then merge the two notions, that is to say Tokelauans should get New Zealand citizenship. This of course does not sit easily with the Western legalistic notions embodied in the Regulations.

Regulation 15 is currently being used to assist the claiming of citizenship by Tokelauans particularly in circumstances where their claim to citizenship of some other state is likely to be unsuccessful.

The *Births and Deaths Registration Regulations 1969* do not specifically address the infrequent but occasional problem of those persons who are adult before they seek to obtain a birth certificate. In extreme cases where the result is likely to be statelessness the very general discretion provided for in regulation 36²¹ has been used to facilitate a registration out of time for the purposes of regulation 15, and from that can flow New Zealand citizenship on the presentation of the Tokelau birth certificate.

5. Problems of Documentation

A number of problems at a very basic practical level arise in respect of citizenship claims of senior members of the Tokelau community because for the period before World War II the records are either incomplete or non-existent. Records are frequently constructed on the basis of affidavit evidence which in turn depends on the memory of the elders of the community. With the advent of easier travel to and from Tokelau and the dependence of modern government on documentation the elderly of Tokelau not infrequently find themselves in the embarrassing situation of not being able to establish their birth identity by witnesses with first-hand knowledge simply because they have outlived those witnesses.

Another matter relating to documentation which is affected greatly by customary

20. Regulation 15.

15. Registration of Births of Children born out of Tokelau

Where a child born out of Tokelau arrives in Tokelau before attaining the age of 18 months, and the parents or other persons having lawful charge of the child are ordinarily resident in or about to take up their abode in Tokelau, a Deputy Registrar, on application being made at any time within 6 months from the date of the child's arrival by one of the parents or by a person having lawful charge of the child as aforesaid, containing the particulars required to be registered concerning the birth, shall register the birth of the child in the manner provided by these regulations for the registration of births taking place in Tokelau.

21. Regulation 36.

36. Discretion of Registrar and Deputy Registrars

Where for any sufficient cause shown to the satisfaction of the Registrar or a Deputy Registrar any act, matter, or thing required by these regulations cannot be done within the time limited by or in strict compliance with the conditions imposed by these regulations, it shall be sufficient if that act, matter, or thing is done within a reasonable time thereafter, or if the conditions imposed are complied with so far as is reasonably possible.

practices is that of name giving. Within the Tokelauan community there is no doubt about the family links between the members of the community. Names change quite frequently during a person's life often as a consequence of a birth, a death, a marriage or in memory of a particular event. It is therefore not uncommon for a husband and wife to have one name in the records at the time of their marriage, to record the birth of their first child under different names, the birth of their second child under different names again and of their third child under still different names. This is not a pattern that is within the expectations of the legislation or the administrative systems and such cases frequently require several and lengthy affidavits to explain the nature and purpose of the name change and also to verify that the identity of the individual is in all cases the same.

6. Conclusion

For persons resident in Tokelau or connected with Tokelau the question of entitlement to citizenship has been a difficult one. The problem is compounded by the *Citizenship Act 1977 (NZ)* which is unclear in some critical areas and may, without the exercise of administrative discretion work unfairly against many applicants. Administrative processes have imposed burdens on applicants which, while they may be reasonable in metropolitan New Zealand, are unreasonable and onerous in a geographically isolated and culturally different community.

The Tokelau example serves to show that as in other areas of law more is needed in the field of nationality than simple conferral of the right to nationality or the right to apply for citizenship. That right must be accessible in practice and, in areas such as the Pacific where communities are isolated, resources are few and access to central administrative support systems often non-existent, a specific commitment is required of states to ensure that basic human rights and expectations can be satisfied.

APPENDIX*Citizenship Act 1977 (NZ) — Section 8***8. Citizenship by grant—**

- (1) The Minister may authorise the grant of New Zealand citizenship to any person (notwithstanding that he may be a New Zealand citizen by descent) who has attained the age of 18 years and is of full capacity and who applies for it in the prescribed manner, and satisfies the Minister that he meets each of the requirements specified in subsection (2) of this section.
- (2) The requirements referred to in subsection (1) of this section are:-
 - (a) That the applicant was, throughout the period of 3 years immediately preceding the date of his application, ordinarily resident in New Zealand:
 - (b) That the applicant is entitled, in terms of the *Immigration Act 1987*, to be in New Zealand indefinitely:
 - (c) That the applicant is of good character:
 - (d) That the applicant has sufficient knowledge of the responsibilities and privileges attaching to New Zealand citizenship:
 - (e) That the applicant has sufficient knowledge of the English language:
 - (f) That the applicant intends, if he is granted New Zealand citizenship, either:-
 - (i) To continue to reside in New Zealand; or
 - (ii) To enter into or continue in Crown service under the New Zealand Government, or service under an international organisation of which the New Zealand Government is a member, or service in the employment of a person, company, society, or other body of persons resident or established in New Zealand.
- (3) For the purposes of paragraph (a) of subsection (2) of this section, the Minister may deem the applicant to have been residing in New Zealand during any period of Crown service under the New Zealand Government served by the applicant within the period of 3 years immediately preceding the date of his application.
- (4) Notwithstanding the said paragraph (a) of subsection (2) of this section, if the Minister is satisfied in a particular case that, because of the applicant's age or for any other reason personal to the applicant, the applicant would suffer undue hardship if he were required to be ordinarily resident in New Zealand for the whole of the period of 3 years specified in that paragraph, the Minister may accept such residence by the applicant for such shorter period (not being less than 12 months) as he thinks fit as being sufficient compliance by the applicant with the requirement of that paragraph.
- (5) Notwithstanding paragraph (e) of subsection (2) of this section if the Minister is satisfied in a particular case that, because of the applicant's age or standard of education, or for any other reason personal to the applicant, the applicant would suffer undue hardship if compliance with the requirement of that paragraph were insisted upon, the Minister may waive that requirement.

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