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Speaker
**KIRTHIKA
PADMANAPAN**
Associate



Speaker
ALYSSA DALILA
Associate



Moderator
CLARISA HOH
Pupil In Chambers

Wed 28 Jan 2026
3:00pm (GMT +8)

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**Born Here, But Don't Belong: Latest Malaysian
Citizenship Cases & Their Impact on Stateless Individuals**



DATO



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Talk Points

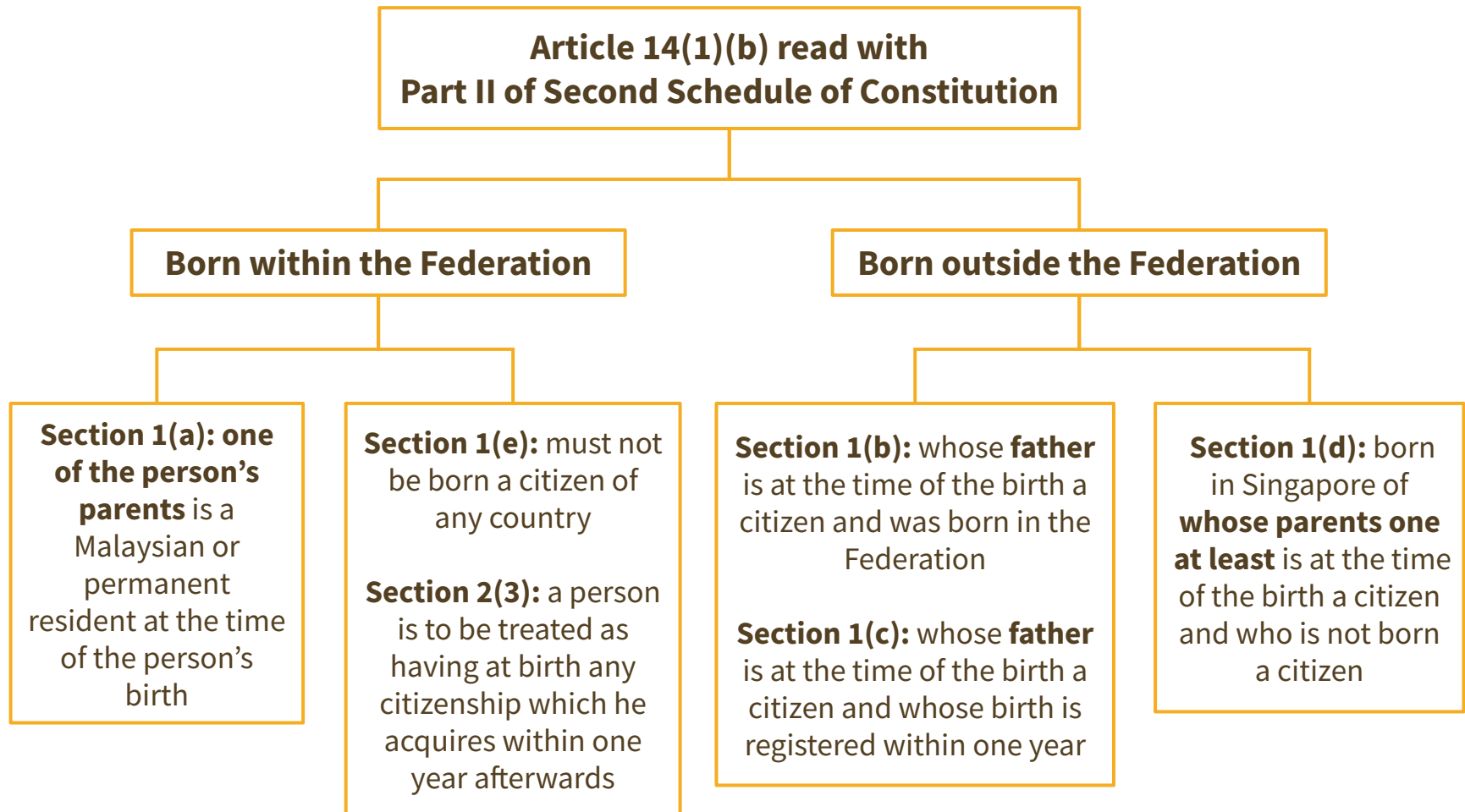
- Recent cases in the Federal Court, Court of Appeal and High Court
- Judgments that redefine citizenship entitlements
- Evidence needed to prove abandonment
- Legal strategies following rejection of citizenship applications

Introduction

Malaysian Citizenship

- Citizenship by operation of law [Article 14 FC]
- Citizenship by registration [Articles 15 to 18 FC]
- Citizenship by naturalization [Article 19 of FC]
- Citizenship by incorporation of territory [Article 22 FC]

Recognition of Citizenship by Operation of Law under Article 14(1)(b) Federal Constitution



Recent Cases

FDN & NDN v Director General of National Registration Department & 2 others (2025, HC)

- The Plaintiffs were born in 1994 and 1995 respectively in Kuala Lumpur to FADN (father), a Malaysian and M (mother), an Indonesian citizen.
- Their parents registered their marriage in 2007.
- Their father passed away thereafter.
- In 2022, the Shah Alam High Court declared that the Plaintiffs are the legitimate children of FADN and M.

FDN & NDN v Director General of National Registration Department & 2 others (2025, HC)

- In 2023, the Plaintiffs filed an Originating Summons to seek reliefs which included a declaration that they were citizens of Malaysia by operation of law:
 - by virtue of their births within the Federation pursuant to **Article 14(1)(b) and Part II Section 1(e) and Section 2(3) of the Second Schedule of the FC**; and
 - by virtue of the citizenship status of their father, FADN pursuant to **Article 14(1)(b) and Part II Section 1(a) of the Second Schedule of the FC**
- In December 2025 the High Court of Kuala Lumpur allowed the Plaintiffs' application and declared them citizens of Malaysia pursuant to Article 14(1)(b) and Part II Section 1(a) of the Second Schedule of the FC

Siti Aisyah binti Yusuf v Attorney General Malaysia & Ors (2024, HC)

- The Plaintiff was born in November 2001 to Khamsia Ridwan (mother) and Yusof bin Mahmud (father). The Plaintiff's parents **were not married at the time of birth** of the Plaintiff. Sometime in 2004, the mother left the plaintiff, leaving her father to raise her until his passing in 2018.
- The Plaintiff's birth was registered under a "late birth" registration six years after her birth. The National Registration Department (JPN) proceeded to issue a Late Birth Registration which stated that her citizenship was **'WARGANEGARA'** **(BC1)**.
- When she later went to JPN to apply for her identity card (MyKad), she discovered that a second birth certificate (BC2) had been issued without her knowledge. In BC2, **her citizenship status had been changed from "Warganegara" to "Bukan Warganegara"**.

Siti Aisyah binti Yusuf v Attorney General Malaysia & Ors (2024, HC)

- The authorities claimed that this amendment was made under Section 30 of the Registration of Births and Deaths Ordinance 1966, even though the Plaintiff never applied to change her citizenship and had only approached JPN for the purpose of obtaining an identity card
- The issues before the court were as follows:
 - Whether the defendants were **empowered to amend the birth certificate** No 1 and subsequently, **revoke** the plaintiff's citizenship;
 - Whether the plaintiff is entitled to citizenship by virtue of **art 14(1)(b) read with s 1(a)**; and
 - Whether the plaintiff is entitled to citizenship by virtue of **art 14(1)(b) read with s 1(e)**.

Siti Aisyah binti Yusuf v Attorney General Malaysia & Ors (2024, HC)

Findings of the Court (Amendment of the Birth Certificate)

- The High Court held that **JPN and the Registrar of Births and Deaths do not have the power to revoke citizenship by simply amending a birth certificate**. Citizenship can only be deprived under **Articles 24–27** of the Federal Constitution, which require notice, due process, and a proper inquiry.
- In this case, the Plaintiff was never given notice, never informed of any deprivation proceedings, and no inquiry under Article 27 was conducted. **The change from “Citizen” to “Non-Citizen” was therefore a unilateral act, done without legal authority.**
- As a result, the court found that BC2 was **unconstitutional**, null and void, because it effectively deprived the Plaintiff of her citizenship without following the Constitution. The judge emphasised that administrative laws on birth registration cannot override constitutional protections

Siti Aisyah binti Yusuf v Attorney General Malaysia & Ors (2024, HC)

Findings of the Court (Citizenship by Operation of Law)

- The judge explained that Malaysia's Constitution applies both jus soli (place of birth) and jus sanguinis (citizenship by parentage), and that these provisions must be **interpreted broadly**, especially where a child risks becoming stateless.
- Citizenship is not merely an administrative status — it is a fundamental constitutional right, closely linked to the right to life and personal liberty under Article 5. Any interpretation that leads to statelessness must therefore be approached with extreme caution

Siti Aisyah binti Yusuf v Attorney General Malaysia & Ors (2024, HC)

Findings of the Court (Citizenship by Operation of Law)

- The court found that the Plaintiff satisfied section 1(e) because she was:
 - Born in Malaysia after Malaysia Day; and
 - Not born a citizen of any other country, nor shown to have acquired foreign citizenship within one year of birth.
- The Government **failed to produce any evidence** that the Plaintiff was a citizen of another country. Merely questioning the status of her biological mother was not enough. If the authorities claimed foreign citizenship, they bore the responsibility to prove it.
- The judge held that if the Plaintiff were denied Malaysian citizenship, she would become **stateless**, which is contrary to the purpose and spirit of the Constitution. On this basis, the court declared that the Plaintiff is a Malaysian citizen by operation of law, and ordered the reinstatement of her original birth certificate.

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Leong Wei Kid & Anor v Pendaftar Besar Kelahiran & Kematian, Malaysia (2025, HC)

- The Plaintiffs were legally married in 1992. They were childless for many years
- The Child was born in Klang on 26.10.2009.
- The Child was brought to their house by the cousin of the 1st Plaintiff together with a birth certificate. The cousin passed away during the COVID-19 Pandemic.
- The birth of the Child was registered on 9.11.2009 at Metro Medical Centre, Klang, and the **birth certificate stated that the Plaintiffs were the parents of the Child.**
- In October 2021 when the Child reached 12 years of age, the Plaintiffs brought him to JPN to apply for his identity card, but the officer noted that the facial features of the Plaintiffs were different from that of the Child, thus an investigation was conducted in respect of the background of the Child.

Leong Wei Kid & Anor v Pendaftar Besar Kelahiran & Kematian, Malaysia (2025, HC)

- During JPN's investigation, the parents were asked to **apply to amend the child's birth certificate** under Section 27(3) Registration of Births and Deaths Act 1957.
- The parents signed statutory declarations stating they were not the biological parents. Based on this:
 - The original birth certificate was seized
 - A second birth certificate was issued
 - Parents' particulars were replaced with "Maklumat Tidak Diperolehi"
 - Citizenship status was changed from "Warganegara" to "Bukan Warganegara"

Leong Wei Kid & Anor v Pendaftar Besar Kelahiran & Kematian, Malaysia (2025, HC)

- The Plaintiffs then decided to legally adopt the child. Subsequently an Adoption Order was obtained from the High Court of Melaka. Unfortunately for the Plaintiffs the citizenship status of the child remained as “BUKAN WARGANEGARA” which meant that the child was stateless.
- Dissatisfied with the decision of the Defendant the Plaintiffs filed an Originating Summons, submitting that the Child is a Malaysian citizen by operation of law under **Article 14(1)(b) and sections 1(e) and 2(3) Part II Second Schedule of the FC.**

Leong Wei Kid & Anor v Pendaftar Besar Kelahiran & Kematian, Malaysia (2025, HC)

Findings of the Court (Amendment of the Birth Certificate)

- Section 27(3) only allows for the correction of clerical or factual errors, not drastic changes affecting:
 - Parentage
 - Citizenship status
- The Court found:
 - the parents did not genuinely “require” the amendments
 - their intention was to obtain a MyKad, not to revoke citizenship
- The parents were ordinary citizens and had no legal advice and merely followed JPN’s instructions, believing that it would help their child.
- The statutory declaration process was not properly explained, and did not meet the legal standard required under s 27(3)

Leong Wei Kid & Anor v Pendaftar Besar Kelahiran & Kematian, Malaysia (2025, HC)

Findings of the Court (Citizenship by Operation of Law)

- The provisions must be interpreted broadly
- The Child was:
 - born in Malaysia after Malaysia Day
 - was initially registered as a citizen
- Even though the first registration was based on incorrect information, it was **legally impossible** for the Child to have acquired another citizenship within one year of birth
- Removing citizenship would render the child stateless, and go against the purpose and spirit of the Constitution

Leong Wei Kid & Anor v Pendaftar Besar Kelahiran & Kematian, Malaysia (2025, HC)

Findings of the Court (Citizenship by Operation of Law)

- The parents made positive assertions that:
 - the child was not a citizen of any other country; and
 - The child never acquired foreign citizenship.
- **A mere denial by the Defendant, without any credible evidence to contradict the Plaintiffs' positive averments** that the child was born in Malaysia and did not acquire any other citizenship within one year of birth, is **not sufficient to discharge the Defendant's burden.**
- In such circumstances, the Plaintiffs' evidence stands unrebutted and the **burden shifts to the Defendant** to prove otherwise.

Leong Wei Kid & Anor v Pendaftar Besar Kelahiran & Kematian, Malaysia (2025, HC)

- The Court held that:
 - The amendment of the birth certificate was unlawful; and
 - the Child is a Malaysian citizen by operation of law.
- The Plaintiffs' application was accordingly allowed.

TSY v Registrar-General of Births and Deaths, Malaysia (2021, COA)

- The Appellant was born in the year 1983 in Johor. The Appellant did not know the identity of her biological parents nor did she have any information about them.
- When she was still an infant, she was sold by her biological mother to a woman, who later registered the Appellant's birth in early 1984.
- The Appellant grew up in Malaysia under difficult circumstances, with limited access to formal education, and has lived in Malaysia her entire life. Despite this, she has never held a Malaysian birth certificate stating her citizenship, and her parentage remains officially unknown.

TSY v Registrar-General of Births and Deaths, Malaysia (2021, COA)

- As an adult, the Appellant was issued a MyKAS identity card, which identified her as a non-citizen, and this document was repeatedly renewed by the authorities over the years. At no point was she given a clear pathway to regularise her status as a citizen, despite being born and raised entirely in Malaysia.
- When the Appellant attempted to apply for citizenship, she was informed that she could not apply because her birth certificate does not contain details of her biological parents. She was then advised to pursue naturalisation, which required her to first obtain Permanent Resident status — something that proved impossible.
- The Immigration Department refused to even allow her to apply for an entry permit or permanent residency, citing the lack of a passport, nationality, and parental information. As a result, the Appellant was trapped in a legal dead end — unable to apply for citizenship, permanent residency, or any meaningful legal status — leading her to seek a court declaration that she is a Malaysian citizen by operation of law, based on her birth in Malaysia.

TSY v Registrar-General of Births and Deaths, Malaysia (2021, COA)

- In April 2019, the Appellant commenced proceedings by Originating Summons in the High Court. She sought a declaration that she is a Malaysian citizen by operation of law, relying on **Article 14(1)(b) read with section 1(e) and section 2(3)** of Part II, Second Schedule of the Federal Constitution, on the basis that she was **born within the Federation and was not a citizen of any other country.**
- The Appellant also challenged the legality of her birth certificate, which recorded her citizenship status as “belum ditentukan” (undetermined). She argued that this classification was unlawful and unconstitutional, and sought orders requiring the authorities to reissue her birth certificate recognising her as a citizen, as well as to issue her a blue MyKad.
- On 24 September 2020, the High Court dismissed the Originating Summons, with no order as to costs. The Appellant subsequently appealed, bringing the matter before the Court of Appeal

TSY v Registrar-General of Births and Deaths, Malaysia (2021, COA)

Findings of the Court

- The central issue before the Court of Appeal was whether paragraph 1(e) of Part II Second Schedule of the FC operates as a **stand-alone provision**, or whether it must be read together with paragraph 1(a), thereby **requiring proof of the Appellant's biological parentage in order to determine her citizenship status.**
- The Appellant argued that she had established a prima facie case by showing that
 - Was born within the Federation; and
 - Did not acquire citizenship of any other country within one year of birth, relying on section 2(3) as a deeming provision.
- On this basis, she contended that the burden shifted to the State to prove otherwise

TSY v Registrar-General of Births and Deaths, Malaysia (2021, COA)

Findings of the Court

- The Court of Appeal agreed with the Respondent and held that paragraph 1(e) is not a stand-alone provision. It reaffirmed its earlier jurisprudence in *Than Siew Beng and Lim Jen Hsian*, holding that citizenship by operation of law under Article 14(1)(b) requires satisfaction of both *jus soli* (place of birth) and *jus sanguinis* (lineage).

TSY v Registrar-General of Births and Deaths, Malaysia (2021, COA)

Findings of the Court

- According to the court, section 2(3) **does not dispense with the need to prove lineage**. Instead, it merely operates as a temporal deeming provision, treating any citizenship acquired within one year after birth as having been acquired at the time of birth. It does not remove the requirement to first determine whether such foreign citizenship could have arisen through the parents.
- The court expressly aligned this approach with the majority decision in CTEB, emphasising that **the relevant point in time for determining citizenship is “at birth”**, and that paragraph 1(e) must be interpreted consistently with this framework rather than expansively.

TSY v Registrar-General of Births and Deaths, Malaysia (2021, COA)

Findings of the Court

- On the issue of burden of proof, the Court of Appeal held that the **burden lies squarely on the Appellant to prove that she “was not born a citizen of any country”**. Statelessness, according to the court, is a positive fact that must be established by evidence and cannot be inferred by deduction or sympathy.
- While the court acknowledged that paragraph 1(e) was intended to prevent statelessness, it distinguished the Federal Court’s decision in CCH, noting that **CCH involved an abandoned child, whereas the Appellant was not legally characterised as abandoned**. The court therefore declined to apply the broader, welfare-based reasoning adopted in CCH to the Appellant’s case.
- Ultimately, the Court of Appeal concluded that **because the identity and nationality of the Appellant’s biological parents were entirely unknown, it was impossible to determine whether she had acquired foreign citizenship at birth. As such, she failed to satisfy paragraph 1(e), and the appeal was dismissed, with the High Court’s decision affirmed.**

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TSY v Registrar-General of Births and Deaths, Malaysia (2021, COA)

- The Appellant obtained leave to appeal to the Federal Court against the decision of the Court of Appeal in 2023. The hearing before the Federal Court panel of judges was fixed in early January 2025.
- Prior to the hearing, the Appellant was informed that JPN allowed her application for citizenship pursuant to Article 19 (Naturalisation). The Appellant consequently withdrew her appeal.
- She is now a Malaysian citizen.

Government of Malaysia & ors v WKH (2019, COA)

- The Respondent was born to a Sarawakian father and a mother whose identity was merely known as Lilis Beni at Hospital Keningau, Sabah in 1995.
- His father passed away when he was 10 years old and his mother passed away when he was 17 years old.
- In 2007, he made his first application for citizenship under Article 15A, but was not given any answer. He then made a second application in 2014 when he was 19 years old, but was ultimately rejected in 2018.

Government of Malaysia & ors v WKH (2019, COA)

- In June 2019 the Respondent filed a Judicial Review application against the decision of the Government that dismissed his application for citizenship.
- The High Court of Kuala Lumpur allowed the application, finding that:
 - The Respondent's **birth certificate is prima facie evidence** that the Respondent was born to a Malaysian father and an entry made on a birth certificate amounts to **conclusive evidence**; and
 - The respondent had **discharged the burden of proof** in showing that he was **not a citizen of any other country** by writing to the Indonesian Embassy

Government of Malaysia & ors v WKH (2019, COA)

- In November 2019 the Government filed an appeal against the decision of the High Court.
- The Court of Appeal **affirmed the High Court's decision** that the respondent was a Malaysian citizen by operation of law by virtue of his birth in Malaysia pursuant to Section 1(e) Second Schedule of the FC.

Government of Malaysia & ors v WKH (2019, COA)

- The Court of Appeal held that:
 - The details on the respondent's birth certificate, which was issued by the Malaysian government, are conclusive;
 - The respondent had discharged his burden of proof in showing that he is not a citizen of any other country when the respondent wrote to the Indonesian Embassy to obtain confirmation of his status as an Indonesian citizen

Government of Malaysia & ors v WKH (HC Grounds of Judgment)

“[23] Kembali kepada fakta kes ini, Pemohon dilahirkan di Hospital Keningau, Sabah pada 2.1.1995. Ini dibuktikan dari sijil kelahiran pemohon yang dieksibitkan sebagai lampiran dalam affidavit sokongan pemohon.

[24] Sijil kelahiran pemohon ini adalah keterangan fakta tanpa perlunya bukti lain seperti dinyatakan di bawah seksyen 33(1), Akta Pendaftaran Kelahiran dan Kematian 1957 yang menyatakan:

33. (1) Subject to the provisions of this section an entry or a Certificate of Birth or a Certificate of Death relating thereto purporting to have been duly certified under subsection 32(2) shall be received without further or other proof as evidence of such facts and particulars relating to such birth or death as are or were at the time of the making of such entry required by law to be set forth in such entry or certificate.”

[25] Tambahan pula fakta ini tidak dipertikaikan oleh responden-responden. Jelasnya pemohon lahir selepas Hari Malaysia dan oleh itu, syarat pertama Perkara 14(1)(b) telah dipenuhi oleh pemohon.”

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Government of Malaysia & ors v WKH (HC Grounds of Judgment)

“[27] Di sini, pemohon telah membuktikan bahawa pemohon lahir di Malaysia dan bukan merupakan warganegara mana-mana negara lain. Berdasarkan sedikit maklumat yang ada berhubung ibu pemohon, pemohon telah membuat semakan di Kedutaan Indonesia dan disahkan bahawa tiada rekod berhubung ibu pemohon atau pun pemohon sebagai warganegara Indonesia.

(...)

[29] Berdasarkan keterangan yang diteliti secara keseluruhan dan terperinci, pemohon juga didapati telah membuktikan bahawa pemohon bukan merupakan warganegara negara lain bagi memenuhi syarat seksyen 1(e), Bahagian II berkenaan.

Government of Malaysia & ors v WKH (2019, COA)

On 17.2.2022, the Government of Malaysia along with the other applicants vide Federal Court Civil Application No.: 08(f)-95-02/2022(W) applied for leave to appeal to the Federal Court against the decision of the Court of Appeal.

However, on 26.10.2022, the Federal Court unanimously dismissed the Government's leave application with no order as to costs. The Court of Appeal judgment remains good law.

Judgments that redefine
citizenship entitlements

CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2021] MLJU 889

- The Appellant was born in the Philippines in 2010 to a Malaysian father and a Filipino mother out of wedlock.
- The parents registered their marriage 5 months later.
- The Appellant has a Philippines passport
- On 24.4.2011, the Appellant applied to the 1st and 3rd respondents for citizenship under Article 15A of the FC, which was rejected without reasons.
- on 11.11.2016, the 1st and 2nd appellants filed an Originating Summons for declarations to the effect that the 1st appellant is a citizen by operation of law under Article 14(1)(b) of the FC or alternatively a citizen under Article 15(2).

- In the High Court, the learned Judge held that the 1st appellant, being an **illegitimate child**, was not allowed to take after the citizenship of his father, the 2nd appellant.
- This limits his lineage to his mother and since she is not a Malaysian citizen, the 1st appellant is not entitled to citizenship by operation of law under section 1(b) of Part II.
- The fact that the 1st appellant was legitimated upon his parents' marriage subsequent to his birth was immaterial to the construction of the provisions of the FC.
- On appeal, **the Court of Appeal agreed with the reasoning of the High Court** and affirmed it based on the same judicial decisions relied on by the High Court and the respondents.

CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors [2021] MLJU 889

- Aggrieved by the decisions of the Courts, the Appellants filed a motion for leave to appeal to the Federal Court, which was allowed on the following questions of law:
 1. Whether it is proper to import into Part II Section 1(b) of the Second Schedule to the Federal Constitution any other requirements for the citizenship of a child born to a Malaysian father other than those expressly stated in the provision?
 2. Whether the words “born outside the Federation” in Part II Section 1(b) of the Second Schedule to the Federal Constitution can be properly read as requiring that the child not hold any other citizenship and/or passport or be stateless to qualify for Malaysian citizenship by operation of law?
 3. Whether the fact that the biological parents of the child who were not married to each other at the time of the child’s birth but subsequently marry, disqualifies the child from acquiring a Malaysian citizenship by operation of law pursuant to Article 14(1)(b) and Part II Section 1(b) of the Second Schedule of the Federal Constitution?
 4. Whether having met the qualifications for citizenship by operation of law under Article 14(1)(b) read together with Part II Section 1(b) of the Second Schedule of the Federal Constitution, can the courts arbitrarily impose further qualifications which are not within the said Article?”.

- The Federal Court dismissed the appeal, on a 4-3 majority ruling.
- The minority judgments (for the Appellants) were given by the former Chief Justice Tengku Maimun Tengku Mat, Federal Court Judge Yang Arif Nallini Pathmanathan, and Federal Court Judge Yang Arif Mary Lim Thiam Suan.

Majority Judgment [on who are the “parents” in Section 1(a)]:

*“[157] From the **express distinction for parents or father of an illegitimate child in s 17, it is obvious that the word ‘parents’ in the context of Part III of the FC must be construed to refer to lawful parents in a recognised marriage in the Federation.** This country never legally recognised unwedded parents. I say so because proper distinctions have always been made in our legislation in order to differentiate between the status of ‘parents’ in a recognised marriage or otherwise. Even under s 13 of the Births and Deaths Registration Act 1957, the legislation makes a clear distinction between a father or mother of an illegitimate child. **This connotes that ‘parents’ refers always to legally wedded parents, not biological father and mother.**”*

Issue: What is the position of an illegitimate child?

Federal Constitution, Part III Second Schedule, Section 17

For the purposes of citizenship, any references to an illegitimate person's "father" or "parent" will be construed as references to his "mother"

Issue: What is the position of an illegitimate child?

*“The Malaysian cases discussed are also clear and unequivocal that because citizenship by operation of law is determined at birth, other laws which retrospectively qualify a person such as **Legitimacy Act or Adoption Act cannot be used to construe the qualification of that person.***

***Subsequent marriage of parents would not change the birth status of the child as an illegitimate child.** ... There is no mention made for the rights of citizenship in the Legitimacy Act. And no corresponding provision in the FC that deems legitimisation confers the right to citizenship.”*

Minority Judgments (Tengku Maimun CJ)

*“The logical conclusion therefore is that having regard to the historical and purposive cannons on construction as borne out from the foregoing interpretive exercise, **the word ‘father’ in s 1(b) of Part II and anywhere else relevant to the context of this appeal ought to be construed as meaning ‘biological father’.** Thus, the legitimacy status of any person claiming citizenship under art 14(1)(b) read together with Part II is an irrelevant factor in cases where **paternity is known** and the said **biological father is a citizen of Malaysia** and has met the rest of the requirements of s 1(b) of Part II.”*

Minority Judgments (Tengku Maimun CJ)

*“Taking this approach, as ‘father’ in s 1(b) means **biological father, whether a person is illegitimate or not is an irrelevant fact in the determination of their entitlement to citizenship provided that the identity of their biological father is known.** In Madhuvita, the child was born in the Federation and there was no issue that the child was the biological child of the father. Hence, both principles of jus soli and jus sanguinis were met. By the same reasoning in this judgment, Madhuvita would have met the requirements of art 14(1)(b) and acquired citizenship.”*

Minority Judgments (Nallini FCJ)

*“However, the nub of this construction is the fact of the existence of the father, a Malaysian citizen, who is thus entitled to confer citizenship by descent on the child. Section 17 Part III does not, and cannot, obliterate the fundamental basis of transmission of citizenship by reason of the blood tie. **It does not envisage depriving the child of a Malaysian father of citizenship on the grounds of the lack of a legally recognised marriage.**”*

Minority Judgments (Nallini FCJ)

*“Further, it is evident from a perusal of s 17 Part III that it provides for the mother’s status to substitute that of the father in s 1(b) Part II. **That should only arise where there is no Malaysian father at all. It does not follow that the citizenship of a legitimate biological father of the child can be ignored in its entirety, simply because the father and mother are not married.**”*

Minority Judgments (Mary Lim FCJ)

*“In my view too, the fact that the first appellant’s father was not married to his mother at the time of his birth in the Philippines **does not diminish** his right to acquire citizenship by operation of law under art 14(1)(b). The second appellant remains the father of the first appellant, and the legal relationship between the father and mother of the first appellant does not alter the status of the first appellant.”*

How is this important even though the Appellants “lost”?

- competing majority & minority approaches to interpretation of citizenship provisions
- majority judgment adopted a strict technical interpretation requiring applicants to positively prove lineage and foreign citizenship status
- minority judgment viewed citizenship as a fundamental constitutional right (“*When interpreting other provisions in the FC the courts must do so in light of the ‘humanising’ & ‘all-pervading’ provision of Article 8(1).’’*”)

CTEB & Anor v Ketua Pengarah Pendaftaran Negara, Malaysia & Ors

How is this important even though the Appellants “lost”?

- the minority in CTEB emphasised that the citizenship provisions were **deliberately drafted to prevent statelessness**, and therefore must be interpreted broadly and purposively, rather than restrictively.
- Importantly, the minority **recognised the impossibility of proving negative facts**, such as proving that a child did not acquire any foreign citizenship — especially where the child has unknown or undocumented parentage. Requiring such proof, the minority held, imposes an unrealistic and unfair burden on vulnerable individuals.

CCH & Anor v Pendaftar Besar bagi Kelahiran & Kematian, Malaysia [2021] MLJU 2321

- The case involved a baby boy abandoned at birth at Hospital Universiti Kebangsaan Malaysia, Cheras.
- The identity and nationality of his biological parents were completely unknown.
- The child was cared for and later formally adopted by the appellants pursuant to a High Court Adoption Order.
- Despite the adoption, the Registrar issued a new birth certificate classifying the child as a non-citizen, effectively rendering him stateless, as he was not a citizen of any other country.
- The Appellants filed a judicial review in the High Court to challenge the decision of JPN to issue a birth certificate stating that the child is not a citizen of Malaysia. The application was dismissed in the HC and COA upon appeal.

On 19.11.2021, the Federal Court held that the child is entitled to citizenship by operation of law by virtue of Section 1(a) read with Section 19B Second Schedule FC.

Important points held by the FC:

- A child is considered to have been “found exposed” if the child was abandoned at the place of birth by the birth mother whose identity is unknown
- According to Section 19B Second Schedule FC, once it is shown or averred that a new born child is ‘found exposed’ (or abandoned), it is presumed that:
 - The child is born to a mother who is permanently resident at the place where the finding was made (the jus sanguinis presumption); and
 - The date of the finding is taken as the date of the birth
- The burden of showing that the child’s mother was not permanently resident at the place of finding rests on the respondent

What does this mean?

- Once abandonment is shown, **the burden shifts to the State** to rebut the presumption under section 19B. It is illogical and unconstitutional to require adoptive parents or children to prove a negative fact, such as the non-existence of foreign citizenship, when the State has superior investigative resources

*[67] Thirdly, this case is **now precedent on how the Ministry of Home Affairs (generally) and the NRD and Registrar-General of Births and Deaths (specifically) ought to deal with all such future cases within the context of abandoned newborn children.***

*... When confronted with an application for registration of such new born children, **the burden is on the respondent to undertake proper investigations to determine the status of such child's biological parents or mother.** If, after investigation, it is found that the fact of abandonment is true, **the respondent is obligated by the highest law of the land in s 19B of Part III to recognise that new born child's citizenship by operation of law,** except where there is evidence to the contrary as we had stated in para 60 earlier.*

*[70] The Ministry of Home Affairs, of which the respondent is an integral part, **have all the important machinery of the State at their disposal to conduct appropriate investigations to ascertain the truth.** The fact that they could not eventually determine the identity of the biological parents of the child or **adduce any evidence of the biological lineage of the child** indicates that they have **not discharged their legal burden to rebut the presumption of permanent residence of the child's mother in s 19B...***

Government of Malaysia & Ors v Suriani Kempe & Ors [2021]

- The 1st Respondent is the president of a non-profit society, Association of Family Support & Welfare Selangor & Kuala Lumpur (Family Frontiers)
- The 2nd-7th Respondents were Malaysian mothers who were married to foreign spouses and who have given birth to children overseas/outside of Malaysia
- Section 1(b), part II of the Second Schedule: “...whose **father** is at the time of the birth a citizen and was born in the Federation...”
- the High Court had allowed the Respondents’ originating summons, making an order, inter alia, that on the proper interpretation of the impugned provision, **the word ‘father’ includes the mother.**

Government of Malaysia & Ors v Suriani Kempe & Ors [2021]

- The Government of Malaysia then filed an appeal.
- The Appeal concerned the issue of gender discrimination which arose in the context of the **inability of a Malaysian mother who is married to a foreigner/non-Malaysian citizen to pass on her citizenship status to her child who is born outside of Malaysia**
- The Court of Appeal was asked to decide whether Article 14(1)(b) read with section 1(b), Part II, Second Schedule must be interpreted literally, or harmoniously with Article 8(2) following the 2001 constitutional amendment prohibiting gender discrimination.
- On 5.8.2022, the Court of Appeal reversed the decision of the High Court by a 2-1 majority.

MSAM v Ketua Pengarah Pendaftaran & Ors [2022]

- Heard together with Family Frontiers
- involved a child born overseas to a Malaysian mother and foreign father, who was denied citizenship by operation of law and told to apply under Article 15 instead.
- On 5.8.2022, the Court of Appeal reversed the decision of the High Court by a 2-1 majority.

Finding of the Majority in Family Frontiers & MSAM

- The Court of Appeal (by majority) held that **the children were not entitled to citizenship by operation of law** under Article 14(1)(b) read with section 1(b), Part II, Second Schedule, because **their fathers were not Malaysian citizens at the time of birth**.
- The court held that it was bound by the majority decision of the Federal Court in **CTEB**, which remains the prevailing law on the interpretation of section 1(b).
- The majority held that **the word “father” in section 1(b) refers only to the biological father, and cannot be read to include “mother” or “either parent”**.
- The only situation where “father” can be construed as “mother” is under section 17, Part III — limited to illegitimate children.

Finding of the Majority in Family Frontiers & MSAM

- The majority rejected the argument that Article 8(2) (gender equality) overrides the citizenship provisions. It held that:
 - The 2001 amendment inserting “gender” into Article 8(2) was not intended to affect Articles 14 and 15
 - Citizenship provisions and fundamental liberties are of equal constitutional standing, with no hierarchy
- While acknowledging the real hardships faced by mothers and children, the court held that such moral and social grievances must be resolved by Parliament, not the judiciary.

Appeal to the Federal Court (SK & MSAM)

- In December 2022, the Federal Court granted leave to appeal to the Respondents, among the questions of law:
 - Whether a person who was born outside the federation to a Malaysian mother is a citizen of Malaysia by operation of law pursuant to Article 14(1)(b) read with Part II Section 1(b) of the Second Schedule of the FC;
 - Whether the term “father” in Section 1(b) should cease to be read literally in a discriminatory way after coming into force of the 2001 amendment which prohibits gender discrimination;
 - whether Article 8(2) of the FC should be interpreted to prohibit gender discrimination in matters concerning citizenship

Appeal to the Federal Court (SK & MSAM)

- The Hearing was fixed on 10.12.2024.
- MSAM was granted citizenship under Article 19 (naturalisation) one day before the Hearing.
- However, granting of citizenship under Article 19 did not mean that her children were automatically granted Malaysian citizenship.
- The children to the 6 mothers in the Family Frontiers case were also granted citizenship under Article 15(2).
- The Hearing was adjourned for parties to discuss an amicable settlement.

How Suriani Kempe & MSAM Changed the Legal Landscape

- In October 2024, Parliament passed the Constitution (Amendment) Bill 2024 with a two-thirds majority, revising citizenship provisions so that **children born overseas to Malaysian mothers are now eligible for automatic citizenship on the same basis as those born to Malaysian fathers**. This represented a major policy shift towards gender equality and substantive citizenship rights.
- In March 2025, Family Frontiers and the 6 Malaysian mothers reached a landmark **settlement** with the Malaysian government at the Federal Court, allowing children born abroad to Malaysian mothers before 2024 to apply for citizenship under Article 15(2).

Evidence needed to prove
abandonment

Section 19B Part III of the FC

“For the purposes of Part I or II of this Schedule **any new born child found exposed in any place shall be presumed**, until the contrary is shown, **to have been born there of a mother permanently resident there**; and if he is treated by virtue of this section as so born, the date of the finding shall be taken to be the date of the birth.”

What does “*found exposed*” mean?

CCH & Anor v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia:

*[53] The operative words in s 19B are ‘any new born child found exposed in any place’. The purpose of this section, when read in context, must be to cover new born children who are left and discovered in a place without any trace of their biological parents. We take judicial notice of the harsh realities of life: **this includes new born children left abandoned near dumpsites, baby hatches, public or school toilets, places of worship and so on. A literal meaning of ‘exposed’ suggests a new born child who was ‘discovered’ exposed at any of these locations.***

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DDL & Anor v Pendaftar Besar Kelahiran dan Kematian Malaysia

*“[33] The facts here show that after the child was born, the child remained with the biological mother up until the plaintiffs met her some eight months after she had handed the child to them. Thus, unlike in CCH (supra), **the mother remained with the child until she was given up for adoption. In this court's view, those facts do not show any abandonment amounting to leaving the child exposed without any trace of the biological parent.**”*

HSM v Ketua Pengarah Jabatan Pendaftaran Negara & Ors

*“[26] In the **absence of the affirmative assertion** in AIS-3 or the further affidavit of the plaintiff in Encl 7 ("AIS-7") that the plaintiff was a new born child "found exposed" in Sandakan, **I do not, with respect, think that a presumption under s. 19B of Part III of the Second Schedule of the FC can be invoked** [...]*

*[28] There is one crucial point which I want to make. It is this. Both AIS- 3 and AIS-7 **do not narrate what happened to the plaintiff after she was born in Sandakan on 8.7.1997.** Who brought her to Miri? When was she brought to Miri from Sandakan? What happened between 1997 to 2012 when the adoption order was made? [...]*

*[30] **The break in the chain of the narration in this case is most unfortunate.**”*

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LSS & Ors v Kementerian Dalam Negeri & Anor

*“[16] Nevertheless, **the above narrative is not corroborated by any documentary or cogent evidence. In fact, such narrative contradicts with what the 1st and 2nd Applicants stated in their own statutory declaration affirmed before a commissioner for oath at the Kulaijaya Magistrate Court on 7.3.2013 when they applied to the NRD for the adoption of the 3rd Applicant.** In that statutory declaration, the 1st and 2nd Applicants confirmed that the 3rd Applicant was given to them by his biological parents on 30.10.1996. It has to be noted that the allegation that the 3rd Applicant was an abandoned child was not even stated in the declaration.”*

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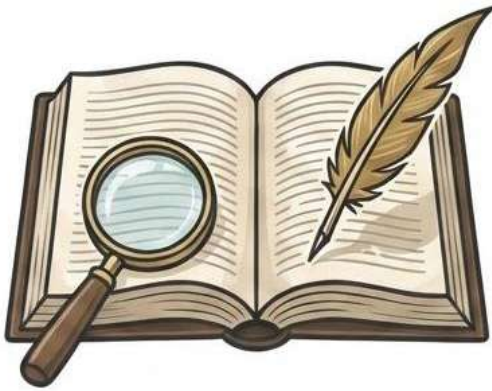
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YYM v Ketua Pengarah Pendaftaran Negara & Ors

*“[46] I find D1's attempt to **resile from his earlier admission of the fact that the child was born at Damai Service Hospital HQ Kuala Lumpur is clearly an afterthought** [...]*

[52] The plaintiff has positively averred she has no knowledge how the child came into the custody of her friend who had handed the then one-week old child to her (encl. 2 para. 11). The plaintiff had also deposed she has no knowledge of the identity of the child's biological parents (encl. 2 para. 12). On the other hand, no evidence was led by the defendants to prove that the child was born outside the Federation or who is the child's biological parents or at least, the child's biological mother.”

What “evidence” is needed?



- Identity of biological parents must not be known



- Clearly plead evidence of abandonment or having been “found exposed”



- No break in chain of custody



- Some evidence of “abandonment” and no contradicting evidence

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Legal strategies following
rejection of citizenship
applications

Registration Provisions

- Options for children who are registered as non-citizens:

- Article 15(2) FC

The Federal Government may cause any person under the age of 21 **of whose parents one at least is a citizen** to be **registered** as a citizen ...

- Article 15A FC: Special power to **register children**

The Federal Government may, in such special circumstances as it thinks fit, cause any person under the age of 21 to be **registered** as a citizen.

Article 14 vs Article 15A & 15(2)

Article 14 of the FC	Article 15A / Article 15(2) of the FC
By operation of law - Automatically deemed a citizen	Not automatically a citizen - by way of registration & discretion of the National Registration Department (JPN) and Ministry of Home Affairs (KDN)
Citizen from date of birth	Citizen from date of granting of citizenship
Birth Certificate states that the individual is a citizen	Birth certificate is not reissued - a separate certificate of citizenship is issued
No age limit	Only those under the age of 21 are eligible to apply

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Application Process

- Parent(s) of the applicant or guardian(s) of the applicant (must have familial ties with the applicant) can apply and the applicant must be present.
- Parents (one at least) have to be a citizen (can include adoptive parents).
- Application is by way of filling a form(which can be obtained from JPN), attaching supporting documents and payment of RM10 (application fee).
- If granted, a fee of RM100 is payable for the issuance of the certificate of citizenship.

Article 15A / 15(2) Applications

- No reasoning provided for rejection of application.
- No exact timeline for the processing of the applications.
- Reduction in eligibility age for those applying effective mid- 2026.
- No repeat applications, applicants have to wait until a rejection is granted in order for an new application to be placed.

Legal Strategies for Rejection

- Once rejection is granted, applicant to file a new application (if eligible).
- Consider filing an application in court pursuant to Article 14 if:
 - Born in Malaysia to a Malaysian father and Non-Malaysian mother out of wedlock;
 - Born overseas to a Malaysian mother and Non-Malaysian father;
 - Born overseas to a Malaysian father (out of wedlock);
or
 - Born in Malaysia and identity of biological parents not known (**subject to requirements**)

Questions?

Upcoming Talks

Date	Topic	Speakers
11 February 2026 (Wednesday)	Out of Time: Limitation Issues in Debt Recovery Actions	Alyssa Dalila & Amir Nizam



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Thank you!

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