[2015] AATA 335

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| Division | **GENERAL ADMINISTRATIVE DIVISION** |
| File Number | 2014/4614 |
| Re | Clariza Morley |
|  | APPLICANT |
| And | Minister for Immigration and Border Protection |
|  | RESPONDENT |

# Decision

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| Tribunal | **Ms G Ettinger, Senior Member** |
| Date | **18 May 2015** |
| Place | **Sydney** |

The Tribunal affirms the decision under review.

................................[sgd]........................................

**Ms G Ettinger, Senior Member**

# Catchwords

Citizenship – eligibility – citizenship by conferral – general residence requirement – spouse of Australian citizen – long periods of absence from Australia in four years immediately before citizenship application – Applicant accompanying Australian citizen husband overseas for his employment – discretion to treat periods of absence from Australia as ones in which Applicant was present in Australia as a permanent resident – whether Applicant had close and continuing association with Australia during periods of absence from Australia – decision under review affirmed

# Legislation

Australian Citizenship Act 2007 (Cth) ss 21, 22, 22A, 22B, 23, 24

# Cases

Re Drake and Minister for Immigration and Ethnic Affairs (No 2) (1979) 2 ALD 634

Re Herrmann and Minister for Immigration and Border Protection [2014] AATA 105

Re Ho and Minister for Immigration and Ethnic Affairs (1994) 34 ALD 664

Re Jiang and Minister for Immigration and Citizenship [2011] AATA 688

Re Kilpi and Minister for Immigration and Citizenship [2012] AATA 605

Re Saba and Minister for Immigration and Border Protection [2014] AATA 579

Re Sie and Minister for Immigration and Border Protection [2014] AATA 60

Re Taher and Minister for Immigration and Border Protection [2013] AATA 917

Re Ul Haque and Minister for Immigration and Citizenship (2013) 139 ALD 376

Re Wang and Minister for Immigration and Border Protection [2014] AATA 555

# Secondary Materials

Australian Citizenship Instructions

Macquarie Dictionary, Sixth Edition (2013)

# REASONS FOR DECISION

**Ms G Ettinger, Senior Member**

**18 May 2015**

# SUMMARY

1. Mrs Clariza Morley is 44 years old, and a citizen of the Philippines. In 2004 she married Simon Morley, an Australian citizen. She became a permanent resident of Australia in February 2008, and applied for citizenship on 17 July 2014. She holds a subclass BB155, (one year resident return) permanent visa.
2. A delegate of the Minister for Immigration and Border Protection, who is the Respondent in these proceedings, refused her application for citizenship on 13 August 2014, on the basis that she did not satisfy section 21(2)(c) and 22(1)(a) and (c)of the *Australian Citizenship Act 2007* (Cth) (Citizenship Act), being the general residence requirement.
3. As Mrs Morley did not satisfy the *general residence requirement*, the delegate gave consideration to the discretion in section 22(9) of the Citizenship Act. The discretion in section 22(9)(d) was not exercised in Mrs Morley’s favour because the delegate 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. The delegate was not satisfied that Mrs Morley met the spousal discretion pursuant to section 22(9) of the Act.
4. Mrs Morley has exercised her rights to apply for review of that decision by this Tribunal. The application concerns whether the discretion in section 22(9) of the Citizenship Act should be exercised so as to treat any of Mrs Morley’s periods of absence from Australia, in the four years immediately before she applied for Australian citizenship, as periods in which she *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.
5. It is necessary to consider whether Mrs Morley had a *close and continuing association with Australia* in the periods in which she was absent from Australia in the four years immediately before her citizenship application for the purposes of section 21(2)(g) of the Citizenship Act. The application of section 21(2)(g) also provides for a consideration of Mrs Morley’s intentions to reside in Australia.
6. I am not satisfied from the evidence that Mrs Morley has that *close and continuing association with Australia*, as required by section 21(2)(g). I am accordingly not able to invoke the discretion to treat any of Mrs Morley’s periods of absence from Australia, in the four years immediately before she applied for Australian citizenship, as periods in which she 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 would therefore be eligible to become an Australian citizen by conferral under section 21(2) of the Citizenship Act.
7. My reasons follow.

# ISSUES

1. As it was agreed by the parties that Mrs Morley does not satisfy the residence criteria within section 21(2)(c) of the Citizenship Act, the issues for decision by the Tribunal are:

* whether Mrs Morley satisfies the criteria in section 22(9)(a) – (d) of the Citizenship Act;in particular whether Mrs Morley 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 for the purposes of section 22(9)(d) of the Citizenship Act;
* whether for the purposes of section 21(2)(g) of the Citizenship Act, the Applicant is likely to reside in, or continue to reside in Australia;
* whether the discretion in section 22(9) of the Citizenship Act should be exercised to treat any or all of Mrs Morley’s periods of absence from Australia as periods in which Mrs Morley was present in Australia as a permanent resident.

# LEGISLATIVE CONTEXT

1. Section 21 of the Citizenship Act deals with the application and eligibility for Australiancitizenship. Mrs Morley was over the age of 18 years and a permanent resident of Australia at the time of her application for citizenship in satisfaction of sections 21(2)(a) and (b). Pursuant to section 21(2)(c) of the Citizenship Act, Mrs Morley would have to satisfy the *general residence requirement* (see also section 22), or the special residence requirement (see section 22A or 22B), or satisfy the defence service requirement (see section 23) at the time of the application. The delegate found that Mrs Morley did notsatisfy the *general residence requirement* in section 21(2)(c).
2. The Respondent also considers that she does not satisfy the requirements of section 21(2)(g) of the Citizenship Act. Section 22(9)(d) deals with the Minister’s satisfaction that an applicant for citizenship *maintain a close and continuing association with Australia if the application were to be approved.*
3. Section 22 deals with the general residence requirement, and follows as relevant.

22 General residence requirement

(1) Subject to this section, for the purposes of section 21 a person satisfies the **general residence requirement** if:

(a) the person was present in Australia for the period of 4 years immediately before the day the person made the application; and

(b) the person was not present in Australia as an unlawful non-citizen at any time during that 4 year period; and

(c) the person was present in Australia as a permanent resident for the period of 12 months immediately before the day the person made the application.

1. Mrs Morley was physically present in Australia for less than 12 months as a permanent resident immediatelybefore she made the citizenship application. Hence she did not meet the *general residence requirement.*
2. The Respondent has indicated from the movement records, and it is not in dispute, that overall, the longest period Mrs Morley spent in Australia was a period of some nine months in 2004 and 2005, 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) of the Citizenship Act, unless the discretion in section 22(9) is exercised in her favour.
3. Section 22(9) of the Act provides for a discretion in some circumstances to treat a period as one in which a person was present in Australia as a permanent resident:

(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.

1. As noted above, Mrs Morley married in Mr Morley in 2004, and became a permanent resident in February 2008. Accordingly she meets the tests in sections 22(9)(a) – (c), and the issue to be determined is whether Mrs Morley had *a close and continuing association with Australia* during the four years before her application for citizenship (section 22(9)(d)), and, if so, whether the discretion in section 22(9) should be exercised in her favour.

# BACKGROUND

1. As previously stated,Mrs Morley is a citizen of the Philippines. Mrs Morley holds a subclass BB155 (resident return) permanent visa which must be renewed annually.
2. Mr and Mrs Morley have two children, aged seven and four. The children of the marriage are Australian citizens. Mrs Morley’s evidence was that notwithstanding they could hold dual citizenship, she greatly values their Australian citizenship, and has not applied for any other on their behalf. One child was born in the Philippines, the other in Thailand. One child was baptised in Australia.
3. Mr Morley’s work in the hotel industry has taken him to various places in the world, many in Asia. He is currently posted in Bali,where the family lives.
4. Mr Morley did not give oral evidence but provided a statement which is in the T-documents at T4/144. Mr Morley corroborated his wife’s statements regarding her deep love of Australia, and connection with their family and extended family in Australia, as well as their plans to return to live in Australia by 2019 in order for their son to commence high school. I am mindful that because of her husband’s employment situation, Mr Morley has not spent any substantial periods in Australia apart from the nine or so months in 2004/2005. Mrs Morley detailed the dates of her visits to Australia in her statement, and a print-out provided by the Respondent gave the precise dates of these visits (Exhibit R2).
5. Mrs Vivien Morley, Mrs Morley’s mother-in-law whom she calls Mum, gave oral evidence before the Tribunal and provided a statement, (T4/147). Mrs Morley senior praised her daughter-in-law, commended her for citizenship, and recounted happy times spent with the family both in Australia, and wherever they have been posted.
6. The Respondent noted that Mrs Morley was physically present in Australia for only 105 days in the four years immediately prior to applying for citizenship on 17 July 2014, and 41 days as a permanent resident in the year preceding the date of application.
7. Mrs Morley’s longest stays in Australia were in Melbourne for a period of approximately nine months in 2004 and 2005, which was outsidethe relevant four year period.
8. I have noted from the records that Mrs Morley has otherwise only spent short periods of time in Australia, being:

* 15 days in 2010/11;
* 18 days in 2012;
* 11 days in 2013;
* 20 days in 2014, and
* 8 days from 9 July 2014 to the date of the citizenship application on 17 July 2014, extending to 4 August 2014.

## Sections 21(2)(c) and 21(2) (g) of the Citizenship Act

1. It is agreed that Mrs Morley does not satisfy the general residence requirement in section 21(2)(c) of the Citizenship Act.
2. The requirements of section 21(2)(g) which deal with whether Mrs Morley is likely to reside in Australia, or to maintain *a close and continuing association with Australia* if her application were to be approved,must be determined.
3. Although Mrs Morley does not meet the *general residence requirement* (section 21(2)(c)), the Minister, and hence this Tribunal, has a discretion pursuant to section 22(9) of the Citizenship Act to treat a period when Mrs Morley was not in Australia, as a period when she was present in Australia as a permanent resident. Discussion of the discretion follows.

### Consideration of section 22(9) of the Citizenship Act

(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.

1. It is common ground that Mrs Morley meets the requirements of sections 22(9)(a)-(c) of the Act in that she was the spouse of an Australian citizen, Mr Morley, during the period relevant to her application, and that she was a permanent resident, only visiting Australia during the relevant period, (17 July 2010 - 17 July 2014). The application of the discretion in section 22(9)(d) of the Citizenship Act may be applied to grant citizenship if the Minister, and the Tribunal standing in his shoes, is satisfied that Mrs Morley had *a close and continuing association* with Australia during the relevant period.
2. However, as already stated above, her application was refused on the basis of 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 Mrs Morley was absent from Australia in the four years immediately prior to her citizenship application for the purposes of s 22(9)(d) of the Citizenship Act.
3. The phrase *close and continuing association* is not defined in the Citizenship Act. The words in the phrase are ordinary English words, and should be given their ordinary meaning in the context in which they appear. By way of example, I note that the latest version of the *Macquarie Dictionary* (Sixth Edition (2013)), defines *close* (at p. 287) as meaning *“near, or near together, in space, time or relation”*, *continuing* (at p. 327) as meaning *“to remain in a particular state or capacity* … *to cause to last or endure; maintain or retain, as in a position”* and *association* (at p. 82) as *“the act of associating … the state of being associated … connection or combination”.*
4. The phrase *close and continuing association with Australia* has been considered in a number of recent Tribunal decisions including, *Saba v Minister for Immigration and Border Protection* [2014] AATA 579, *Re Sie and Minister for Immigration and Border Protection* [2014] AATA 60 at [37], *Re Herrmann and Minister for Immigration and Border Protection* [2014] AATA 105 at [33], *Re Ul Haque and Minister for Immigration and Citizenship* (2013) 139 ALD 376 at [52], *Re Taher and Minister for Immigration and Border Protection* [2013] AATA 917 at [47] and [48], and *Re Jiang and Minister for Immigration and Citizenship* [2011] AATA 688 at [25].
5. As Senior Member Walsh noted in *Re Wang and Minister for Immigration and Border Protection* [2014] AATA 555, one of the conclusions drawn in these decisions is that whilst a spouse may have *a close and continuing association* with Australian family, that is not the same as a spouse having *a close and continuing association with Australia*. Senior Member Walsh noted, and I agree, that the fact that the spouse of an Australian citizen has a close and continuing association with her Australian citizen spouse’s family will not, by itself, constitute a close and continuing association with Australia for the purposes of s 22(9)(d) of the Citizenship Act.
6. Mrs Morley is convinced she has a *close and continuing association* *with Australia* in terms of the legislation. Both she and her mother-in-law Mrs Vivien Morley gave evidence at the Tribunal. The Applicant was keen to demonstrate that she has ongoing contact with her husband’s family**,** as depicted in print-outs from her face book, and with the presence of two cousins who live in Australia.

### Consideration of the discretion

1. In coming to a decision regarding whether Mrs Morley has a *close and continuing association* *with Australia*, in terms of section 22(9)(d) of the Citizenship Act, a consideration of the Australian Citizenship Instructions (Citizenship Instructions), is necessary, and follows.
2. The Citizenship Instructions contain the following introduction:

The role of the ACIs is to support the Australian Citizenship Act 2007. The instructions provide guidance on policy in relation to the interpretation of, and the exercise of powers under, the Act and the Regulations. Decision makers should be mindful that policy must not be applied inflexibly. Policy cannot constrain the exercise of delegated powers under the Act.

1. I am mindful that the Tribunal must apply lawful government policy unless there are cogent reasons to the contrary. (*Re Drake and Minister for Immigration and Ethnic Affairs* (No 2) (1979) 2 ALD 634) There are no reasons not to apply the Citizenship Instructions in this case.
2. The Citizenship Instructions indicate in relation to spouses of Australian citizens who are permanent residents, that factors which demonstrate a *close and continuing association with Australia* while overseas include, but are not limited to:

* evidence that the person migrated to and established a home in Australia prior to the period overseas
* Australian citizen children
* long term relationship with Australian citizen spouse or de facto partner
* extended family in Australia
* regular return visits to Australia
* regular periods of residence in Australia
* intention to reside in Australia
* person has been on leave from employment in Australia while accompanying their spouse or partner overseas
* ownership of property in Australia
* evidence of income tax payment paid in Australia over the past four year and
* evidence of active participation in Australian community based activities or organisations.

In assessing whether a person has a close and continuing association with Australia for the purposes of 22(9)(d),it is policy that more weight should be given to the above factors if the person has been lawfully and physically present in Australia for at least 365 days in the 4 years immediately before making an application for Australian citizenship (including at least 90 days as a permanent resident). Less weight should be given if they have not been present in Australian for at least this period.

1. I am mindful that the above list is not exhaustive, and that it is a not a matter of ticking boxes, but rather taking a holistic view of the Applicant’s situation in considering whether she is able to demonstrate that she has a *close and continuing association with Australia*.
2. In that regard I respectfully agree with the following comments of Senior Member Fice in *Re Taher and Minister for Immigration and Border Protection* [2013] AATA 917 at [47]:

In my opinion, the factors referred to [in section 5.18 of the Citizenship Instruction] should not be treated in isolation or simply “ticked off” individually as having been satisfied. It is the combination and association of these factors which may demonstrate a close and continuing association with Australia…

1. I note also Ms Rabadi’s reference to *Saba v Minister for Immigration and Border Protection [2014] AATA 579*, and am mindful of Senior Member Taylor’s comments reproduced below regarding the weighting of factors in relation to section 22(9)(d) of the Citizenship Act.

14. The policy requirement to give “more weight” to “the above factors” where an applicant can demonstrate a minimum period of recent Australian presence is overtly imperative. It understandably highlights the relevance, and potential materiality, of substantial recent periods of Australian residence. But the imperative obliges an ill described comparison, and is actually equivocal in its content. The contrasting requirements to give “more” or “less” weight according to the whether or not applicant has satisfied the 365 day residence period stated in the Instructions, neither state nor imply that such a period of recent residence is a necessary pre-condition to achieving the relevant satisfaction. The intentional imprecision of the comparison contemplates that in some situations a decision maker may properly be satisfied of an applicant’s “close and continuing association” despite quite a long period of residential absence. Achieving that satisfaction in any particular applicant’s circumstances, where various factors may vary in their apparent significance, can be very much a matter of impression, and difficult to express with clear or persuasive conviction.

15. Difficulties of that kind are inherent in the exercise of any decision making function that requires regard to a wide range of potentially relevant considerations. But neither anxiety about that inherent difficulty, nor disagreement with the expressed reasons for any decision, should be allowed to substitute pragmatic guidelines for the proper exercise of the statutory task. In particular, the “more weight”/“less weight” proposition cannot be applied as an abbreviated substitute for the generality of the statutory discretion …..

1. I agree with Senior Member Taylor’s thoughts expressed above, and proceed then to further consider factors that may demonstrate Ms Morley’s *close and continuing association with Australia*, but not weighted in any particular order (*Re PMYL and Anor and Minister for Immigration and Border Protection* [2014] AATA 148**)**.

### Evidence that the person migrated to and established a home in Australia prior to the period overseas

1. Mrs Morley did not migrate to, nor establish a home in Australia prior to the period overseas. She worked in Melbourne in 2004 and 2005, and spent some nine monthsthere over that period. Mrs Morley told me that she and Mr Morley rented an apartment in Melbourne in that period.

### Australian citizen children

1. Mrs Morley has two children, aged seven and four whose father is Simon Morley, and who are Australian citizens. Their son was born in the Philippines in 2007, and baptised in Sydney in 2008. Their daughter was born in Thailand in 2011.

### Long term relationship with Australian citizen spouse or de facto partner

1. Mrs and Mr Morley have been married since 2004.

### Extended family in Australia

1. Mrs Morley was enthusiastic when speaking about her family in Australia. She is very close to Mr Morley’s family, and calls her mother-in-law, Mum. Mrs Vivien Morley, Mr Morley’s mother who attended at the Tribunal, and gave oral evidence, told me that everyone loves her daughter-in-law, that Clariza understands Australian culture well, and that if she had a choice, she would return to live here tomorrow.
2. Mrs Morley told me that she has emotional ties with Australia, and that many of her friends are Australians. She has two cousins who live in Melbourne, and who provided statements to the Tribunal. She told me that Ms Brioso is her first cousin. Other statements universally praising Mrs Morley, and indicating what a good person she is, were from Laura and Kingsley Clark, Martin Goldberg, Adam Legge, Daclan Moses, Peter Blythe, Dave Morley (Mr Morley’s brother), Thirza Teuben (cousin of Simon Morley), Kristen Turner (Australian citizen and teacher at Bali International School), Gemma Sinclair teacher of one of the children in Grade 1 at Phuket International Academy).

### Regular return visits to Australia

1. Mrs Morley spent 105 days in Australia in the four years immediately before the date of her application for citizenship on 17 July 2014. Mrs Morley told me that she returns to Australia whenever she can, at least once or twice a year, and brings the children on school holidays. She explained that she did not travel to Australia in 2011 because she was pregnant.
2. As already noted above, Mrs Morley’s visits to Australia were as follows: 15 days in 2010/11; 18 days in 2012; 11 days in 2013; 20 days in 2014, and 8 days from 9 July 2014 to the date of the citizenship application on 17 July 2014, and extending to 4 August 2014.

### Regular periods of residence in Australia

1. Notwithstanding Mr and Mrs Morley’s ownership of an apartment in Australia since 2011, Mrs Morley has to date never resided in Australia apart from a total of approximately nine months in 2004/2005.

### Intention to reside in Australia

1. Mrs Morley gave evidence that she had discussed returning to Australia with her husband. Their son is enrolled in Newington College to commence high school at his father’s old school in 2019. Mrs Morley would like both children to attend high school in Australia.
2. Mrs Morley also indicated that when her younger child attends school in a year or so, she wants to undertake some on-line courses in order to upgrade her qualifications, and to be able to again work in Australia.
3. She also told me that in anticipation of their return, she obtained a Medicare card. She also has a Katies store card, and a superannuation account which she had to compulsorily acquire when she was on a payroll in Australia in 2004/2005. Mrs Morley also told me that she has not learnt to drive elsewhere, but has taken driving lessons in Australia in anticipation of living here.
4. The Respondent cited *Re Ho and Minister for Immigration and Ethnic Affairs* (1994) 34 ALD 664 where Deputy President McMahon (as he then was), considered the meaning of the phrase*likely to reside in Australia*. The Respondent noted that at [31], Deputy President McMahon stated:

It cannot mean “likely to take up residence in 18 months or two years time” or “likely to reside some time in the indefinite future if economic conditions permit and if a suitable job can be found”. The juxtaposition of the phrase with the opening phrase of the paragraph, indicates that the minister must be satisfied that the applicant is likely to reside in Australia immediately, or very soon after, being granted a certificate of Australian citizenship.

1. The Respondent submitted relying on *Re Ho*, that Mrs Morley does not demonstrate a likelihood to reside in Australia, and therefore does not meet the requirements of section 21(2)(g) of the Citizenship Act. The Respondent submitted that accordingly, she would not, in the immediate future, be able to maintain *a close and continuing association with Australia*, particularly having regard to the significance of actual presence in Australia.
2. I have noted the Respondent’s submissions regarding *Re Ho*, and a much more recent comment on the interpretation and weight to be given to evidence regarding a citizenship applicant’s *intention to reside* (*Re Saba and Minister for Immigration and Border Protection* [2014] AATA 579), which I prefer. I accept the Applicant and her husband intend to return to Australia by 2019 when their son commences high school. That is however in part dependent on Mr Morley’s employment situation which is not at all certain, and in any case, not imminent, but some four years into the future.

### The person has been on leave from employment in Australia while accompanying their spouse or partner overseas

1. Mrs Morley has never resided in Australia except in 2004/2005 when she spent some nine months in Melbourne, and worked in the hotel industry. Mrs Morley is financially fully dependent on Mr Morley at present, but has indicated that she plans to upgrade her skills and return to the paid work force when she returns to live in Australia.

### Ownership of property in Australia

1. The evidence about the apartment the Morley’s have owned since 2011, is that it is rented out, and if a suitable home cannot be found before the family’s return to Australia, by 2019 when their son who is booked to commence in high school at Newington College, they will live there. The evidence before me was that the couple are looking into purchasing a further investment property, but may defer that purchase to instead acquire a family home.
2. Mrs Morley told me that the apartment is managed by real estate agents on their behalf, with their regular involvement.
3. Mrs Morley told me that their money is invested in Australia, and that they have no investments elsewhere. They have furniture and clothing in storage here in anticipation of their return.
4. Mrs Morley told me that she has paid insurance and tax, and operated a bank account jointly with her husband.
5. The Respondent does not accept that the above-named activities go to Mrs Morley’s *close and continuing association with Australia* on the basis that the Applicant had *not demonstrated a relationship with Australia independent of her relationship with her husband such that she can be said to have a close and continuing association with Australia in her own right*.
6. I have noted the submissions, and will consider them in the context of an examination of all the Applicant’s circumstances.

### Evidence of income tax paid in Australia over the past four years

1. Mrs Morley’s evidence was that she and her husband pay income tax annually in Australia in relation to the real estate and investments which they hold here.

### Evidence of active participation in Australian community based activities or organisations

1. There was little evidence of active participation in Australian community based activities or organisations by Mrs Morley, although she has cited family holidays, barbecues, and watching football games. Mrs Morley also provided Facebook pages showing the family interacting with other Australians, and enjoying each other’s company.

### Friends and Relatives

1. Mrs Morley tendered a number of statements from family and friends, including Mrs Morley senior, Mr Adam Legge, godfather to the Morley’s son; Dacian Moses who said that he has known Mrs Morley since 2004; Olivia Brioso, Mrs Morley’s first cousin; Peter Blythe, close family friend of Mr Morley; Dave Morley, Simon Morley’s brother; Thirza Teuben, Mrs Morley’s cousin; Kristen Turner, Australian citizen and the Morley son’s teacher in Bali; Gemma Sinclair, Australian citizen and teacher in Phuket where the Morley family were posted.
2. The Tribunal has noted that the referees mentioned above were unanimous in supporting Mrs Morley’s application for citizenship on the basis of her close and continuing connection with Australia, the way she has brought up her children to be Australians, and the contribution she would make to life in Australia. They are of value as one of many factors in assessing Mrs Morley’s *close and continuing association with Australia.*

## Conclusions regarding whether Mrs Morley has a close and continuing association with Australia

1. In coming to a conclusion regarding whether Mrs Morley meets the test for a *close and continuing association with Australia*, I have taken into account the evidence of Mrs Morley, her mother-in-law, Mrs Morley senior, and her friends and relatives, and the submissions of both parties. I am satisfied that:

* Mrs Morley met Simon Morley in Dubai, and married him in 2004, in the Philippines. The evidence before me is that a large number of family and friends from Australia attended. That was some 11 years ago. I respectfully agree with Senior Member Handley that the mere fact of being married to an Australian for a significant time can be considered to be *an association or connection to Australia* (*Re Kilpi and Minister for Immigration and Citizenship* [2012] AATA 605)*.*I accept that the only reason why Mrs Morley has not resided in Australia is that she has followed her husband all over the world to support and assist him with his life, work and their children. That weighs strongly in her favour.
* I am satisfied from Mrs Morley’s evidence that she has great love for Mr Morley, and raising two children with him.
* I am also satisfied from the evidence that subject to Mr Morley’s work, the family plan to return to Australia by 2019, in order for their son to commence high school for which he is booked. Mrs Morley also told me that they will look for a school for their daughter when next in Australia.
* The couple have jointly owned an apartment in Australia since 2011, which is managed by real estate agents on their behalf.
* Mrs Morley and the children are economically dependent on Mr Morley. They only have investments in Australia.
* I accept Mrs Morley’s argument that many of her friends are Australian, that she is close to Mr Morley’s relatives, and accept that she has entered into the spirit of the Australian family, and the closeness to her mother-in-law and family. In giving weight to this factor, I am mindful of the distinction to be made between a *close and continuing association with Australia*, and Australians.
* The referees listed above were unanimous in supporting Mrs Morley’s application for citizenship on the basis of her *close and continuing association* *with Australia*, the way she brought up her children to be Australians, the contribution she would make to life in Australia.
* I find Mrs Morley has that association with Australians, but am not satisfied from the evidence that she has *a close and continuing association* with Australia.

1. In coming to a decision I have noted the Respondent’s view that Mrs Morley has not worked or lived in Australia in the relevant period. As she is currently not in the paid workforce, and is at home bringing up the couple’s children, she is financially dependent on Mr Morley.
2. Having considered all the evidence regarding Mrs Morley’s connection with Australia, and the application of the factors listed in the Citizenship Instructions, and taking a holistic view of the situation, I am satisfied that Mrs Morley did not have a *close and continuing association with Australia* in the four years immediately before the citizenship application for the purposes of s 22(9)(d) of the Citizenship Act.
3. In consideration of section 21(2)(g) of the Citizenship Act, I am mindful of the evidence that the Morleys anticipate returning to Australia to live in 2019. There is no certainty about that as it will no doubt depend upon Mr Morley’s employment situation. I am not persuaded that four years is a period contemplated in section 21(2)(g) of the Citizenship Act, and the Citizenship Instructions. In saying that I am mindful of what the Tribunal held in *Re Ho* and *Hanan Saba.*
4. Accordingly I am not satisfied that the discretion in section 22(9)(d) of the Citizenship Act should be exercised in Mrs Morley’s favour to treat all of the periods in which Mrs Morley was absent from Australia in the four years before the citizenship application as periods in which she was present in Australia as a permanent resident. The decision under review must be affirmed.
5. It is of course open to Mrs Morley to apply for citizenship whenever in the future she feels that she is eligible.

# DECISION

1. The Tribunal affirms the decision under review.

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| I certify that the preceding 72 (seventy - two) paragraphs are a true copy of the reasons for the decision herein of Ms G Ettinger, Senior Member |

..................................[sgd]......................................

Associate

Dated 18 May 2015

|  |  |
| --- | --- |
| Date of hearing | **25 March 2015** |
| Solicitor for the Applicant | **Ms T Rabadi, Levitt Robinson** |
| Solicitor for the Respondent | **Ms B Griffin, Australian Government Solicitor** |