

## CASE LAW COVER PAGE TEMPLATE

<b>Name of the court</b> <sup>1</sup> (English name in brackets if the court's language is not English): Myanmar: Supreme Court of the Union	
<b>Date of the decision:</b>	dd /mm / yyyy 1959
<b>Case number:</b> <sup>2</sup>	Cases No. 155 & 156 of 15
<b>Parties to the case:</b> Hasan Ali v. Union of Burma	
<b>Decision available on the internet?</b> <input checked="" type="checkbox"/> Yes (but only extracts) <input type="checkbox"/> No If yes, please provide the link: <a href="http://www.burmalibrary.org/docs13/Verma-Foreigners.pdf">http://www.burmalibrary.org/docs13/Verma-Foreigners.pdf</a> at pp. 78 and 121 [accessed 23 October 2013] (If no, please attach the decision as a Word or PDF file):	
<b>Language(s) in which the decision is written:</b> Burmese	
<b>Official court translation available in any other languages?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (If so, which): extracts in English	
<b>Countr(y)(ies) of origin of the applicant(s):</b> Myanmar	
<b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):</b> Myanmar	
<b>Any third country of relevance to the case:</b> <sup>3</sup> Pakistan	
<b>Is the country of asylum or habitual residence party to:</b>	
The 1951 Convention relating to the Status of Refugees <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
<b>(Only for cases with statelessness aspects)</b> The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
<b>(Only for cases with statelessness aspects)</b> The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
<b>(For AU member states):</b> The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
<b>For EU member states:</b> please indicate which EU instruments are referred to in the decision	Relevant articles of the EU instruments referred to in the decision:

**Topics / Key terms: (see attached ‘Topics’ annex):**

**Citizenship / Nationality law, Arbitrary arrest and detention, Proof of nationality**

**Key facts (max. 200 words)**

The applicant, Hasan Ali, had been arrested and issued with an order of deportation being accused of illegal entry in Myanmar. The applicant claimed that he could not be deported, as he was a citizen of the Union, and as such, not a “foreigner”.

**Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]**

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The Supreme Court held obiter dicta that:

“We note that the 1st respondent in his returns has stated that the applicants are Pakistanis in appearance; that they have no knowledge of the Burmese or the Arakanese languages; and that they are unable to answer questions relating to events which had occurred in Arakan during the past decade. From these, he stated, the Immigration authorities were satisfied that the applicants are illegal immigrants of recent origin. Further, in applying the tests which the 1st respondent has mentioned, section 4(2) of the Union Citizenship Act must not be lost sight of. A person descended from ancestors who for two generations have made Burma their permanent home, and whose parents and himself were born in Burma is a statutory citizen. Today in various parts of Burma there are people who, because of their origin and isolated way of life, are totally unlike the Burmese in appearance or speak of events which had occurred outside the limits of their habitation. They are nevertheless statutory citizens under the Union Citizenship Act. The applicants claim that they belong to that category. They might be right and therefore the opportunity of proving that they are, should be given to them. To deny them this opportunity would be a violation of their fundamental right.”

Further it was held that in the first place the Controller of Immigration was not an authority appointed by the President to exercise the powers of deportation under section 7 (2) of the Act and secondly that the applicants were not yet subjected to orders of deportation under section 7 (2) as recited in the order. On these considerations alone the detention orders were liable to be quashed.

The Supreme Court further held as follows :

“However, the question involved goes much deeper. Section 7, under which detention is authorised has so often been amended piecemeal that the position is confusing and it is necessary to determine, at what stage and in what circumstances and at whose behest, a foreigner can be detained under the immigration laws.”

In conclusion, the applicant’s detention under the orders of an Immigration Officer was canceled on the basis that it was unwarranted in law and he was ordered to be released. Deportation orders made against other detainees were subsequently cancelled based on this precedent.

**Other comments or references (for example, links to other cases, does this decision replace a previous decision?)**

Other cases to look at:

Mohamed Rahum Amin Vs. The Union of Burma, 1957 B. L. R. 25 S. C, extracts available at:  
<http://www.burmalibrary.org/docs13/Verma-Foreigners.pdf> at p. 160 [accessed 23 October 2013]

U Sin Koi v. U San Win, The Burma Gazette 1958, Pt I Page 478, extracts available at:  
<http://www.burmalibrary.org/docs13/Verma-Foreigners.pdf> at pp. 120 and 158 [accessed 23 October 2013]

Gulbahar v. The Union of Burma, 1965 B. L. R. (C.C.) 811

Peer Mohamed v. Union of Burma, 1965 B. L. R. (C.C.) 51

## **EXPLANATORY NOTE**

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

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