

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Myanmar: Election Tribunal			
Date of the decision:		Case number: ²	Gazette 1958, Pt I
dd /mm / yyyy 1958			
Parties to the case: <i>U Sin Koi v. U San Win</i>			
Decision available on the internet? <input checked="" type="checkbox"/> Yes (but only extracts) <input type="checkbox"/> No			
If yes, please provide the link: http://www.burmalibrary.org/docs13/Verma-Foreigners.pdf at p. 120 and 158 [accessed 23 October 2013] (If no, please attach the decision as a Word or PDF file):			
Language(s) in which the decision is written: Burmese			
Official court translation available in any other languages? <input checked="" type="checkbox"/> Yes (but only extracts) <input type="checkbox"/> No (If so, which): extracts in English			
Countr(y)(ies) of origin of the applicant(s): Myanmar			
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Myanmar			
Any third country of relevance to the case: ³ China			
Is the country of asylum or habitual residence party to:			
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:	
(Only for cases with statelessness aspects) 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:	
(Only for cases with statelessness aspects) 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:	
(For AU member states): 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:	
For EU member states: 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, Multiple nationality

Key facts (max. 200 words)

U Sin Koi was elected to the Chamber of Deputies at the general elections from Tavoy north by securing a larger number of votes than his rival U San Win.

U Sin Koi was admittedly a Sino-Burmese whose grand-father was a Chinese born in China. His mother and grand-mother were Burmese. It was contended on behalf of U San Win that a Sino-Burmese resident in Burma possesses dual nationality of Burmese and Chinese citizenship and that he was entitled to apply for the rights and privileges of Chinese citizenship from the Chinese Government. Therefore, in view of section 74(1) (i) of the Union Constitution, which provides that any person who is under any acknowledgement of allegiance or adherence to a foreign power or is a subject or citizen or entitled to the rights and privileges of a subject or a citizen of a foreign power, shall be disqualified from being chosen as and for being a member of either Chamber. It was contended that U Sin Koi should be unseated.

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 Election Tribunal observed that the question involved was of vital importance to the members of the Sino-Burmese nationals of mixed blood, as it affected their status as citizens of the Union of Burma. It then proceeded to state the case law on the subject of 'nationality' and said that nationality in the sense of citizenship of a certain state must not be confused with 'nationality' meaning membership of a certain nation in the sense of race. So far as the Union of Burma is concerned, it was pointed out; the law relating to citizenship is section 11 of the Constitution and the Union Citizenship Act. Under section 11 (ii) every person born in any of the territories of the Union of Burma at least one of whose grandparents belongs or belonged to any of the indigenous races of Burma, shall be a citizen of the Union.

The Tribunal however recognised that this provision did not preclude other States from legislating in any manner they deemed fit regarding the status of the descendants of their nationals in foreign lands. Thus an individual may possess double nationality knowingly, and with or without intention. Many States, the Tribunal pointed out, were alive to the complications of dual nationality and therefore have passed laws insisting on the renunciation or divestment of one nationality or the other. Burma is one of those States which strongly disapproves of their citizens possessing dual nationality and section 14A of the Union Citizenship Act was obviously designed for this purpose.

The question whether a Burmese citizen possesses dual nationality or not, i.e. the nationality of another state in addition to Burmese nationality, will have to be judged primarily in accordance with the law of Burma and not the law of any other State, the Tribunal ruled. Section 14A of the Union Citizenship Act sets out the position of those Burmese nationals who may have acquired dual nationality owing to the Acts of foreign Governments. As and when a Burmese national acquires dual nationality, the Act proceeds to divest him of Burmese citizenship unless he takes steps as provided to renounce the nationality of the foreign state concerned.

But so far as Burmese nationals covered by section 11 of the Constitution and Section 4 (2) and 5 (b) of the Union Citizenship Act are concerned, it was pointed out they are expressly excluded except where such individuals have registered as foreigners with a foreign Government. In that case they lose the Burmese citizenship.

U Sin Koi, the Tribunal added, had not registered with the Chinese embassy and had not obtained any passport from that quarter. He could not, therefore be said to have acquired dual nationality. So far as the law in force in the Union was concerned, he would appear to be entitled to the rights and privileges of a Chinese national only when he obtained a passport from the Chinese Government or registered himself as a Chinese national with the Chinese embassy. The moment he obtained such rights he would be divested of his Burmese citizenship and will cease to be a member of Parliament. At present the question did not arise and U Sin Koi was a Burmese citizen.

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

Other cases to look at:

Hasan Ali v. Union of Burma, Supreme Court Criminal Miscellaneous Cases No. 155 & 156 of 15, extracts available at: <http://www.burmalibrary.org/docs13/Verma-Foreigners.pdf> at pp. 78 and 121 [accessed 23 October 2013]

Mohamed Rahu 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]

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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