

4. A foreign national who has been in the Republic on a visa for a period of 5 years qualifies to apply for a Permanent Residence Permit. A Permanent Residence Permit holder has all the rights of a South African citizen, except for the right to vote.
5. The application and adjudication of temporary visas and permits is managed within the Immigration Services Branch.
6. The granting of temporary visas or permanent residence permits requires foreign nationals to meet the criteria set out per visa/permit type. However, in the event an applicant cannot meet any of the requirements, he or she can apply for a waiver of the prescribed requirement, which may be approved by the Minister in terms of Section 31(2)(c) of the Immigration Act, 2002.
7. For instance, in terms of the Immigration Regulations, a foreign national may invest in businesses of R5 million and above, but at times requests are received wherein a person is unable to provide the prescribed amount, in such circumstances, the Minister is then approached to grant a waiver.
8. If the applicant is not happy with the outcome, in terms of the immigration legislation, there is an internal remedy, which is an appeal. If the applicant is not satisfied with the outcome of the appeal, the applicant may resort to a judicial review.
9. Once granted a permanent residence permit an applicant is issued a South African ID book, with a differentiation of non-citizen. This affords the permit-holder citizen rights except right to vote.

CIVIC SERVICES LEGISLATION: NATURALISATION

10. A foreign national who has a permanent residence permit, and has completed 5 years in South Africa, qualifies to apply for naturalization in terms of the Citizenship Act, 1995 as amended in 2010. In terms of Section 5 of this Act (**Annexure A**), a person will qualify for naturalisation:
 - a. He or she is not a minor,
 - b. He or she has been admitted to the Republic for permanent residence,
 - c. He or she is ordinarily resident in the Republic and that he or she has been resident for a continuous period of not less than 5 years immediately preceding the date of his or her application. (Regulations make provision for an applicant to be outside the country for a period not exceeding 90 days per year),
 - d. He or she is of good character,

- e. He or she intends to reside in the Republic or to enter or to continue in the service of the Government of the Republic or of an international organisation of which the Government of the Republic is a member or of a person or association of persons resident or established in the Republic,
 - f. He or she is able to communicate in any one of the official languages of the Republic to the satisfaction of the Minister,
 - g. He or she has adequate knowledge of the responsibilities and privileges of South African citizenship,
 - h. He or she is a citizen of a country that allows dual citizenship provided that in the case where dual citizenship is not allowed by his or her country such person renounces citizenship of that country and furnishes the Minister with proof of such renunciation.
11. Furthermore, if the applicants for naturalisation have children or dependants (mother or father) they must apply as a family. An application for naturalisation can be adjudicated for an individual or for a family. It should be noted that if one family member does not qualify, then the whole application is unsuccessful.
12. In the event that an applicant does not meet fully the prescribed requirements set out in (b) above, that a person should ordinarily be resident in the Republic for a continuous period of not less than 5 years immediately preceding the date of his or her application, he or she may request the Minister to consider to waive the requirement based on exceptional circumstances in terms of Section 5(9)(a) of the Citizenship Act, 2010 (Act 17 of 2010) (**Annexure B**).

PROCESSING OF APPLICATIONS WITHIN CIVIC SERVICES

13. It is important to note that the initial process of assessment involves preparation of a submission by an official who goes through the file and collates all information in the submission to be presented to the Naturalization Adjudication Committee, established by the Civic Services Branch, and chaired by the Chief Director: Back Office Status Services with other three Members of the Committee. The Committee ensures that the applicant complies with all the requirements. In terms of its role, the Committee either approves or rejects applications.
14. An applicant will submit an application to Civic Services as an individual or as a family by submitting Application of Naturalisation (DHA 63). The Directorate: Citizenship verifies the authenticity of the issued permanent residence certificate.

15. If the Naturalisation and Adjudication Committee approves the processes of issuance, the applicant must then sign a Declaration of Allegiance. Where the applicant's country does not allow dual citizenship, the applicant must submit a renunciation of citizenship letter from the country of origin.
16. Submission of above-stated documents would lead to changing of identity number from permanent residence identity number to a citizen identity number which provides for all the rights of citizens, including the right to vote. Failure to submit a signed Declaration of Allegiance or renunciation letter would lead to the naturalisation not being issued.

CHRONOLOGICAL STEPS FOLLOWED BY THE APPLICANTS

Mrs Angoori Gupta (Mother) (1945/12/30)

1. The applicant applied for and was granted a visa (Temporary Residence Permit) dated 1995/12/28 and another one dated 1997. This means that she first arrived in the country in 1995. Furthermore she applied for another TRP based on family re-union whilst in New Delhi, in 2001/01/08.
2. According to our records, Mrs A Gupta visited South Africa for short periods lasting up to about 6 months at a time.
3. Mrs Gupta applied for a Permanent Residence Permit which was approved on 10 March 2003 after 8 years from her first TRP granted in 1995.
4. Thereafter Mrs Gupta applied for naturalization on 3 June 2013 as part of the family, which was 10 years since she was granted a Temporary Residence Permit, as against a requirement of 5 years.
5. Her application was rejected after adjudication by the Committee on 23/12/2014 (**Annexure C**) as per the refusal letter dated 22/01/2015 (**Annexure D**), due to the fact that in the 5 years preceding her application, she was outside the country for a period exceeding the prescribed 90 days per year, by 18 days in the last year, as shown below:

Year 5: 2014/07/29 – 2013/07/29 (3 months 18 days)

Year 4: 2013/07/29 – 2012/07/29 (0)

Year 3: 2012/07/29 – 2011/07/29 (0)

Year 2: 2011/07/29 – 2010/07/29 (0)

Year 1: 2010/07/29 – 2009/07/29 (0)

Mr Ajay Gupta (1966/02/05)

6. Mr AK Gupta initially came to South Africa on a Work Permit granted for the following periods:
- 2000/07/21 until 2001/04/05
 - 2001/05/30 until 2002/06/05
 - 2002/06/07 until 2005/05/13
 - 2005/02/28 until 2008/02/20

These work permits were granted to him as an employee of SAHARA.

7. Mr Ajay Gupta applied for a permanent residence permit which was issued to him on 18/01/2008, after 8 years in South Africa, as against a requirement of five years.
8. Thereafter Mr Ajay Gupta applied for naturalization on 3 June 2013 as part of the family, which was 5 years since he was granted a Permanent Residence Permit, in compliance with the requirement of 5 years.

9. Mr Ajay Gupta's period of residence in South Africa is as follows:

Year 5: 2009/06/03 – 2008/06/03 (16 days)
Year 4: 2010/06/03 – 2009/06/03 (2 months 10 days)
Year 3: 2011/06/03 – 2010/06/03 (1 month 28 days)
Year 2: 2012/06/03 – 2011/06/03 (2 months 5 days)
Year 1: 2013/06/03 – 2012/06/03 (1 month 18 days)

10. As reflected above, Mr Ajay Gupta complied with the ordinary residence periods however, his application was rejected after adjudication by the Committee on 23/12/2014 (**Annexure E**) as per the refusal letter dated 22/01/2015 (**Annexure D**) due to the fact that other members of the family did not meet the requirements.

Mrs Shivani Gupta (wife) (1970/05/10)

11. Mrs Shivani Gupta is the wife of Mr Ajay Gupta. She applied and obtained a spousal permit on 31 May 2001, valid until 30 May 2002. A further spousal visa was issued on 24 February 2005 until 22 February 2008. Another spousal visa was issued valid until 31 December 2010, after which a final extension was granted valid until 21 December 2015.

12. Mrs Shivani Gupta applied for a permanent residence permit which was approved on 7 June 2012, after 11 years in South Africa, as against a requirement of 5 years.
13. Thereafter Mrs Shivani Gupta applied for naturalization on 3 June 2013 as part of the family, which was a year since she was granted a permanent residence permit, in compliance with the requirement of 5 years.
14. Her application was rejected after adjudication by the Committee on 23/12/2014 (**Annexure E**) as per the refusal letter dated 22/01/2015 (**Annexure D**), due to the fact that she did not complete 5 years preceding her application as shown below:

Year 5: (0)

Year 4: (0)

Year 3: 2012/07/17 – 2012/06/07 (24 days)

Year 2: 2013/07/17 – 2012/07/17 (1 month 20 days)

Year 1: 2014/07/17 – 2013/07/17 (1 month 12 days)

The reason for rejection was that she was short of 2 years, thus the Gupta family was advised to apply in December 2017.

Mr Kamal Kant Singhala (1992/10/25)

15. The applicant is a son of Mr Ajay and Mrs Shivani Gupta. He applied and was granted a visa (Temporary Residence Permit) dated 1995/12/28.
16. Mr Kamal Kant Singhala applied for a permanent residence permit which was approved on 18 January 2008 after 12 years, as against a requirement of 5 years.
17. Thereafter Mr Kamal Kant Singhala applied for naturalization on 3 June 2013 as part of the family, which was 5 years since he was granted a Permanent Residence Permit, in compliance with the requirement of 5 years.
18. Mr Kamal Kant Singhala's period of residence in South Africa is as follows:
Year 5: 2009/07/29 – 2010/07/29 (30 days)
Year 4: 2010/07/17 – 2011/07/17 (19 days)
Year 3: 2011/07/17 – 2012/07/17 (44 days)
Year 2: 2012/07/17 – 2013/07/17 (0)
Year 1: 2013/07/14 – 2014/07/14 (15 days)

19. As reflected above, Mr Singhala complied with the ordinary residence periods however, his application was rejected after adjudication by the Committee on 23/12/2014 (**Annexure F**) as per the refusal letter dated 22/01/2015 (**Annexure D**), due to the fact that other members of the family did not meet the requirements.

Mr Surya Kant Singhala (1995/03/10)

20. The applicant is a son of Mr Ajay and Mrs Shivani Gupta. He applied and was granted a visa (Temporary Residence Permit) dated 1995/12/28.

21. Mr Surya Kant Singhala applied for a permanent residence permit which was approved on 18 January 2008 after 12 year, as against a requirement of 5 years.

22. Thereafter Mr Surya Kant Singhala applied for naturalization on 3 June 2013 as part of the family, which was 5 years since he was granted a permanent residence permit, in compliance with the requirement of 5 years.

23. Mr Surya Kant Singhala's period of residence in South Africa is as follows:

Year 5: 2014/07/17 – 2013/07/17 (1 month 26 days)

Year 4: 2013/07/17 – 2012/07/17 (17 days)

Year 3: 2012/07/17 – 2011/07/17 (2 months 10 days)

Year 2: 2011/07/17 – 2010/07/17 (1 month 8 days)

Year 1: 2010/07/29 – 2009/07/29 (20 days)

24. As reflected above, Mr Surya Kant Singhala complied with the ordinary residence periods however, his application was rejected after adjudication by the Committee on 23/12/2014 (**Annexure G**) as per the refusal letter dated 22/01/2015 (**Annexure D**), due to the fact that other members of the family did not meet the requirements.

25. Please note that "Singhala", used as a surname for the two sons, was explained as denoting "Gupta" in India (**Annexure H**).

CONSIDERATION OF EXCEPTIONAL CIRCUMSTANCES

26. When the Gupta family was informed of their unsuccessful application as per letter dated 22 January 2015 (**Annexure D**), particularly informing them that as a statutory requirement, any

person who lodges an application should not have been absent from the Republic for a period of more than 90 days in any year during the five year period of ordinary residence immediately preceding the date of application for naturalisation, they exercised their right to approach the Minister for him to consider exceptional circumstances as per the powers vested in the Minister in terms of Section 5(9)(a) of the Citizenship Amendment Act, 2010, as per the letter dated 29 April 2015 (**Annexure B**).

27. In this regard, as explained above, it was Mrs Angoori Gupta (mother) and Mrs Shivani Gupta (wife) who did not meet the requirement as Mr Ajay Gupta and the two sons met the requirements of physical residence in the Republic, with the proviso that they can be outside the Republic for not longer than 90 days in a year during the 5 year period of ordinary residence preceding the date of application for naturalisation.
28. On receipt of the letter dated 29 April 2015 (**Annexure I**) from the family requesting the Minister to consider granting early naturalisation due to exceptional circumstances, the Civic Services Branch prepared a submission for the Minister's approval of granting early naturalisation based on the motivation, during the month of May 2015 (**Annexure J**).
29. The Department in recommending for the approval of the early naturalisation, considered the family's business presence and investments in the Republic. Hence the Minister granted approval on 30 May 2015 (**Annexure K**).
30. However, it is important to note that the exceptional circumstance were only in respect of the mother and the wife.

IMPLEMENTATION OF NATURALISATION

31. After the approval was granted, because India does not accept dual citizenship, the family had to provide proof of renunciation of Indian citizenship (**Annexure L**). Mr Ajay Gupta did not provide proof of renunciation. As a result, his naturalisation was not effected and thus he remains a permanent resident permit holder. Naturalisation was effected after receiving renunciation letters for the mother (**Annexure M**), the wife (**Annexure N**) and the two sons, Mr Kamal Kant Singhala (**Annexure O**) and Mr Surya Kant Singhala (**Annexure P**).
32. In terms of Section 5(9)(b) of the Citizenship Act (**Annexure Q**), the Department is required to table names of those granted SA citizenship by naturalisation to Parliament. The last report was submitted in 2012 (**Annexure R**). Since 2013, the Department naturalised four families and five individuals as per the attached document (**Annexure S**). It was an omission on the part of the

Department not to have tabled the names. The Department is in preparation for tabling of outstanding names.

33. The Department received a Parliamentary Question No. 2146 from the National Assembly, due for publication on 14 October 2016, as raised by Honourable MP Hoosen, asking: "With reference to his reply to question 1007 on 25 April 2016, what are the full details of the exceptional circumstances under which [the Minister] granted citizenship to certain persons [in the Gupta family]" (**Annexure T**). The Department replied accordingly, explaining the exceptional circumstances for granting citizenship to the Gupta family.

CONCLUSION

34. The process which was followed to grant the naturalisation was according to the legislation and the regulations which govern both the immigration and civic services.

Signed:



Mkuseli Apleni

Director-General of the Department of Home Affairs

22/06/2017