

We go the extra mile (there are no traffic jams on the extra mile)

AUSTRALIAN CITIZENSHIP RE-INSTATED FOR OUR CLIENT IN SOUTH AFRICA

This is an extract of the decision by the Australian Dept. of Home Affairs after we made representations to them they incorrectly revoked our client's Australian Citizenship. We have deleted our client's name for confidentiality reasons.

Dear Mr Silver

Thank you for your email to the Department of Home Affairs on 30 March 2021 regarding the Australian citizenship status of

Ms acquired Australian citizenship by descent on 22 August 1984 in her birth name. As you have noted, she was notified by the Department of Home Affairs on 1 February 2018 that it had been determined that she was incorrectly registered as an Australian citizen by descent because she did not meet the requirements to be approved as an Australian citizen by descent under Section 10B of the Australian Citizenship Act 1948 (the ACA 1948). Ms was advised that her records had been annotated to show that she is not an Australian citizen.

You have raised your concerns that this decision was incorrect as Section 10B was not in effect at the time Ms was registered as an Australian citizen.

Ms case has been reviewed by the delegate, Principal Migration Officer at Pretoria post and also reviewed by colleagues in the Department's Headquarters in Canberra, Australia.

Section 10B of the ACA 1948 was inserted into the ACA 1948 by the Australian Citizenship Amendment Act 1984 (the Amendment Act). It required (amongst other things) that at the time of the person's registration, a parent of the person born outside of Australia was present in Australia for a period, or periods amounting in the aggregate to, not less than 2 years (s 10B(1)(b)(ii)(B) refers). Subsection 2(2) of the Amendment Act provided that subject to sub-section (2), this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent. The Amendment Act received the Royal Assent on 25 October 1984. This meant that s 10B came into operation 28 days later, on 22 November 1984. Therefore, at the time of Ms registration on 22 August 1984, s 10B had not come into effect.

At the time of Ms birth, section 11 of the ACA 1948 relevantly provided:

11. (1) A person born outside Australia on or after 26th January, 1949, is an Australian citizen by descent if-
(a) in the case of a person born in wedlock-at the time of the birth his father or mother was an Australian citizen;
....
and, in either case, the birth was or is registered at an Australian consulate within five years after its occurrence or within such further period as the Minister allowed or allows.

On the information before us, at the time of her birth, Ms mother was an Australian

citizen. Both her parents were married at the time of her birth. On this basis, it is clear that Ms satisfied the requirements for citizenship by descent under s 11 of the ACA 1948.

The Department is in the process of amending the annotation to show that it was made incorrectly and will show that she acquired Australian citizenship by descent on 22 August 1984.

On behalf of the Department of Home Affairs, I would like to pass on my sincere apologies to Ms for this error, for the inconvenience, and for any distress that this has caused.

If the Department has made an error that has caused a person a financial loss or some other detriment, they might be able to make a claim for compensation. Compensation can be claimed for loss suffered as a result of one of the following:

- *legal liability*
- *special circumstance arising out of Commonwealth administration.*
- *defective administration.*

More information on this including how to apply can be found here: [Claiming compensation from us \(homeaffairs.gov.au\)](#)

Thank you for bringing this matter to our attention.

*Kind regards
Ben*

*Ben Opray
Second Secretary
Department of Home Affairs
Australian High Commission
Pretoria, South Africa*

From: Phillip Silver & Associates Australia - immi <immi@phillipsilver.com.au>
Sent: Tuesday, 30 March 2021 4:35 AM
To: Immigration PRETORIA <immigration.pretoria@dfat.gov.au>
Cc: Bernardi, Susan <Susan.Bernardi@dfat.gov.au>; Phillip Silver & Associates Lawyers <lawyer@phillipsilver.com.au>
Subject: ANNOTATION OF CITIZENSHIP RECORDS OF

Dear Migration Officer

I represent

Please see attached letter requesting re-instatement of my client's registration as an Australian Citizen and Australian passport.

I look forward to your reply.

Phillip Silver & Associates

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