



## OFFICE OF THE OMBUDSMAN

### RE-ISSUED WORKING PAPER

# ON THE UNLAWFUL DECISION OF THE CITIZENSHIP COMMISSION TO GRANT CITIZENSHIP TO A LATVIAN NATIONAL

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## **1. JURISDICTION**

- 1.1 The Constitution and the Ombudsman Act allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. This includes the conduct of the members of the Citizenship Commission. The Ombudsman can also look into defects in laws or administrative practices, including the grounds on which a person is granted Vanuatu citizenship according to the provisions of the Constitution and the Citizenship Act [CAP 112].

## **2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED**

- 2.1 The purpose of this working paper is to provide an opportunity for parties to respond to its contents before this Office issues a public report.
- 2.2 This working paper is a re-issue of the Working Paper this Office issued on 3<sup>rd</sup> November 2011.
- 2.2.1 The scope of this investigation is to establish the facts about the grounds on which the Citizenship Commission granted Vanuatu citizenship to Mr Juris Lvovich Gulbis on 5 November 2010 and to determine whether the precedent and practice by which the Citizenship Commission has been granting citizenship on the ground of adult adoption is defective and/or unconstitutional.
- 2.2.2 Furthermore, it would also examine the quick process by which the approval was made and a Vanuatu Citizenship Certificate was issued.
- 2.2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

## **3. RELEVANT LAWS**

Relevant parts of the following laws are reproduced in **Appendix M**.

**Constitution of the Republic of Vanuatu**

**Citizenship Act [CAP 112]**

**Leadership Code Act [CAP 240]**

**Interpretation Act [CAP 132]**

## **4. OUTLINE OF EVENTS**

- 4.1 The Ombudsman received a complaint that the Citizenship Commission granted Vanuatu citizenship to a Mr Juris Lvovich GULBIS on 5 November 2010 which was unconstitutional and thus in breach of Article 12 of the Constitution and sections 11 and 12 of the Citizenship Act [CAP 112], which requires that a person must have lived continuously in Vanuatu for at least 10 years immediately before the date of his application for citizenship. Mr Gulbis applied for a Vanuatu Passport in accordance with his Citizenship Certificate, however, there were concerns that Mr Gulbis has not fulfilled the requirements as stipulated in Article 12 of the Constitution and the Citizenship Act [CAP 112].

- 4.2 Mr Gulbis was born on 01 September 1981 in Kazakhstan and his previous nationality was Latvian. **See Appendix A.**
- 4.3 On 12 October 2008, he was adopted into the family of Tari BULUK in Fanafo and accordingly was given the name Juris, GULBIS SAKEN. **See Appendix B.**
- 4.4 Mr Gulbis has travelled to and from Vanuatu since 2008. In 2009, he obtained a residence permit No. JG801/12/09 dated 07 December 2009 which expired on 06 December 2010. His residence permit stated him to be an investor. **See Appendix C.**
- 4.5 On 25 November 2009, Mr Gulbis obtained an Approval Certificate Permitting A Foreign Investor to Carry On Business in Vanuatu from VIPA concerning HIRAM GROUP (VANUATU) LIMITED. **See Appendix D.**
- 4.6 On 01 January 2010, Mr Gulbis obtained a Business Licence Certificate valid for 2010 for Hiram Group (Vanuatu) Ltd, a company which he operated. **See Appendix E.**
- 4.7 On 27 October 2010, Mr Gulbis lodged an Application for Vanuatu Citizenship with the Citizenship Office and deliberation by the Citizenship Commission.
- 4.8 In his Application Form, he stated that the date of his arrival in Vanuatu was 2008. Refer to copy of Application For Vanuatu Citizenship Form A, Section C(1)(b) on Page 4. **See Appendix F.**
- 4.9 The Citizenship Commission at that time had five (5) members , namely, Joseph Joemelson (Chairman) Michael Liu (member), David Bong (member), Maliwan Robert (member) and Thomas Naditawae (member).
- 4.9 On 05 November 2010, the Citizenship Commission deliberated and along with other matters approved Mr Gulbis' citizenship. The Citizenship Commission approved Mr Gulbis' citizenship on the grounds that he has an adoption letter from the Nagriamel Movement and the President of the SHEFA Provincial Council (**see Appendix G1**), including that he has a business in Vanuatu. In addition, their approval included that he has a residence permit, a VIPA licence and that he is a lawyer by profession. **See Appendix G2.**
- 4.10 He was then issued a Citizenship Certificate referenced NC – 0056/10. **See Appendix H**

- 4.11 On the same day (05 November 2010), the Secretary General of the Citizenship Commission wrote to Mr Gulbis asking him to send his passport to the Head Quarters of his present nationality (Latvian) to have it cancelled. He expressly stated that Citizenship Regulations require him three (3) months to have his Latvian nationality renounced before the Citizenship Office consider issuing his Vanuatu Citizenship Certificate. **See Appendix I.**
- 4.12 On 11 November 2010, the Secretary of the Citizenship Commission wrote to the Principal Passport Officer and confirmed that the Citizenship Commission approved Mr Juris Gulbis SAKEN as a naturalised citizen on 05 November 2010 and that his Vanuatu Certificate of Citizenship NC-0056/10 has been signed. **See Appendix J.**
- 4.11 On 18 November 2010, Mr Gulbis applied for a Vanuatu passport.
- 4.12 After the Ombudsman enquired with the Citizenship Commission and the Citizenship Office, a response was received explaining the grounds on which the Citizenship Commission approved the matter. According to the Secretary General of the Citizenship Commission, the decision to award naturalised citizenship to Mr Gulbis by the Citizenship Commission was justified on the grounds of:
- a) Full and complete Application form with a supporting letter of adoption
  - b) Adoption of an adult is in line with the traditional/customary practices of Vanuatu
  - c) Took into consideration the remarks or observations during the last 2010 meeting of the Council of Ministers (CoM) requesting the consideration of any request (of citizenship) be on the basis of customary adoption by virtue of the culture of Vanuatu
  - d) Took into account that there was previously a similar file that was dealt with in the same manner, i.e adult adoption although not expressly stated in the Citizenship Act
  - e) That Mr Gulbis has a complete and convincing case as a law-abiding person.
  - f) An investor or businessman responsible for the Hiram Group.
- 4.13 The members of the Citizenship Commission who deliberated on the matter were Joseph Joemelson (Chairman), Michael Liu (member), David Bong (member). Members Maliwan Robert and Thomas Naditawae were absent during this meeting.
- 4.14 On 17 January 2011, confirmation was received from the Secretary to the Council of Ministers, Mrs Nadine Alatoa that there was no such decision taken on this matter as referred to in paragraph 4.11(c) above. **See Appendix K.**

4.15 Normally, under Section 11 of the Citizenship Act, only children (persons under 18 years old) can be adopted and become citizens of Vanuatu. There is no reference at all to adult adoption under section 11. **Refer to Appendix M.**

4.16 The general criteria for naturalised citizenship are provided for in section 12(1) and (2) of the Citizenship Act [CAP112] which states that:

**12. Application for, and granting of, citizenship by naturalization**

(1) A person of full age and capacity may apply in the prescribed manner to the Commission to be naturalized as a citizen.

(2) Where on an application made pursuant to subsection (1) and as a result of such inquiries as the Commission may cause to be made, the Commission is satisfied that the person making the application –

(a) is, on the date of application, and has been during a period of 10 years immediately prior to that date, ordinarily resident in Vanuatu;

(b) intends to continue to reside in Vanuatu;

(c) is of good character;

(d) unless prevented by physical or mental disability, is able to speak and understand sufficiently for normal conversational purposes, Bislama, English, French or a vernacular of Vanuatu;

(e) has a respect for the culture and the ways of life of Vanuatu;

(f) is not or is unlikely to become a charge on public funds;

(g) has a reasonable knowledge and understanding of the rights, privileges, responsibilities and duties of citizens;

(h) has renounced or agreed to renounce any citizenship which he may possess; and

(i) has taken and subscribed to an oath of allegiance or made a solemn affirmation in the form set out in Schedule 1;

(j) the Commission may grant the application, but otherwise shall refuse it.

4.17 Pursuant to section 12(2)(j), it is within the discretion of the Citizenship Commission to grant or refuse an application for naturalised citizenship.

4.18 Along with other naturalised citizens, Mr Gulbis name was published in the Official Gazette No.18 of 2011 dated 3 May 2011, through an Order signed by Joemelson Joesph, Chairman of the Citizenship Commission. **See Appendix L.**

**5. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM**

5.1 The responses received to date are mentioned in the text. When a public report is prepared, this section will be completed to include all responses received in response to this working paper.



## **6. FINDINGS**

### **6.1 Finding 1: The Citizenship Commission breached Article 12 of the Constitution and as such erred in their decision in awarding Citizenship to Mr Gulbis.**

#### **6.1.1 The Citizenship Commission has breached Article 12 of the Constitution which clearly states that**

A national of a foreign state or a stateless person may apply to be naturalised as a citizen of Vanuatu if he has lived continuously in Vanuatu for at least 10 years immediately before the date of the application...

#### **6.1.2 By application this means that counting back from the date of the Application for Citizenship, the applicant must have lived 10 years in Vanuatu. Mr Gulbis' Application for Citizenship Form was dated 27 October 2010 and approval was granted on 05 November 2010.**

#### **6.1.3 On his Application for Citizenship Form, Mr Gulbis arrived in Vanuatu in 2008, however, he was only given a residence permit on 07 December 2009 referenced JG801/12/09 which expired on 06 December 2010.**

#### **6.1.4 Even before his residency permit expired, Mr Gulbis was granted citizenship which means that he only lived in Vanuatu for less than a year.**

#### **6.1.5 On the authority of Article 12 of the Constitution, Mr Gulbis is not eligible for citizenship and as such, the Citizenship Commission erred in granting him one.**

#### **6.1.6 Even though section 12(2) of the Citizenship Act provides for other grounds that approval might be obtained on, the Constitution is the supreme law<sup>1</sup> of this country (Vanuatu) and the Citizenship Commission should uphold this supremacy in considering all applications it has before it.**

### **6.2 Finding 2: The Citizenship Commission breached section 11 of the Citizenship Act [CAP 112] and as such erred in approving Mr Gulbis citizenship on the ground of adult adoption**

#### **6.2.1 One of the grounds or reasons which the Citizenship Commission approved Mr Gulbis citizenship was by virtue of his adoption by the Nagriamel chiefs. They agree that this was in line with the traditional and customary practices of Vanuatu. This is nowhere stated to be a ground for approving citizenship in the Citizenship Act.**

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<sup>1</sup> Constitution of the Republic of Vanuatu, Article 2. The Interpretation Act [CAP 132] in Section 9 states that (1) Every Act shall be read and construed subject to the Constitution and where any provision of an Act conflicts with a provision of the Constitution the latter provision shall prevail.

(2) Where a provision in an Act conflicts with a provision in the Constitution the Act shall nevertheless be valid to the extent that it is not in conflict with the Constitution.

- 6.2.2 Section 11 of the Citizenship Act provides for the adoption of children. It is silent on the adoption of adults. A "child" under the Citizenship Act is defined as "a person who has not attained 18 years".<sup>2</sup>
- 6.2.3 Mr Gulbis was born on 01 September 1981. He was 29 years old when he was granted naturalised Vanuatu citizenship. He is certainly not a child under section 11 thus does not qualify to be given citizenship in the criteria of adult adoption as approved by the Citizenship Commission on his application.
- 6.2.4 It would have been proper that his application was refused on the basis that he has not fulfilled the 10 years requirement as stipulated by Article 12 of the Constitution.

**6.3 Findings 3: The Chairman of the Citizenship Commission, Mr Joemelson Joeseph erred and worked inconsistently with the Secretary of the Commission.**

- 6.3.1 In his letter to Mr Gulbis dated 5 November 2010, Mr Leye Eloi Najap stated clearly that Mr Gulbis was required to renounce his Latvian nationality before his office considered issuing his Vanuatu Citizenship Certificate. He was given three [3] months to do so.
- 6.3.2 However, on 11 November 2010, Mr Leye wrote to the Principal Passport Officer confirming that a Vanuatu Citizenship Certificate was already signed for Mr Gulbis.
- 6.3.3 Not surprisingly, it appeared that the Vanuatu Citizenship Certificate was signed the same day it was approved, by the Chairman of the Citizenship Commission, Mr Joemelson Joseph. This very action fell short of the three months requirement stated by Mr Leye Eloi Najap. In addition, Mr Joemelson Joseph's action of signing the Citizenship Certificate the same day it was approved, was inconsistent with the procedures of the Citizenship Office. This is a corrupt practice and should be discouraged.

**6.4 Finding 4: The Citizenship Commission erred in approving Mr Gulbis citizenship because they failed to make enquiries on his status and Application Form.**

- 6.4.1 Under section 12(2) of the Citizenship Act [CAP 112], the Commission must enquire and satisfy itself that the person making the application has fulfilled all the requirements stated in the Constitution and the Citizenship Act before they approve the person's citizenship.
- 6.4.2 In this present case, it appears that enquiries were made after approval was already made in the Commission meeting. The Citizenship Commission Minutes of 05 November 2010 confirmed this when the Secretary General was asked to make further enquiries as to the shareholdings of the company Hiram Group (Vanuatu) Limited. This same meeting approved Mr Gulbis citizenship.

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<sup>2</sup> Section 1(1).



**6.5 Finding 5: The members of the Citizenship Commission as leaders by virtue of section 5 (f) of the Leadership Code Act have breached Article 66 of the Constitution.**

**6.5.1** Section 5 (f) of the Leadership Code Act [CAP 240], states that

In addition to the leaders referred to in Article 67 of the Constitution, the following are declared to be leaders: members and the chief executive officers (however described) of the boards and statutory authorities.

**6.5.2** Section 3 of the Citizenship Act established the Citizenship Commission which qualifies it as a statutory authority and as such the members are subject to the Leadership Code Act.

**6.5.3** By disregarding the 10 years requirement articulated in Article 12 of the Constitution and approving Mr Gulbis citizenship on adult adoption, the members of the Citizenship Commission have placed themselves in a position where the fair exercise of their official duties is compromised. They have ignorantly allowed their integrity to be called into question. In this way, they fail to show respect for the relevant laws and subsequently have endangered the integrity of the Government of the Republic of Vanuatu.

## **7. RECOMMENDATIONS**

**7.1.** The Ombudsman makes the following recommendations on the basis of the above findings:

**Recommendation 1:** That the Citizenship Act [CAP 112] be reviewed so that there are strict criteria and processes in place when considering naturalised citizenship.

**Recommendation 2:** that the Review anticipated sees to the repeal of sections 19 and 20 of the Citizenship Act. Allowing the Prime Minister and the President of the Republic of Vanuatu to respectively issue a Certificate of Citizenship Status and conferring an honorary citizenship leaves room for abuse and corruption. The repeal would ensure that all applications are processed through the Citizenship Commission instead of having some applications being processed by a Prime Minister and/or President of Vanuatu.

On the other hand, for the time being, in the event of wanting to confer an honorary citizenship to anyone the Prime Minister or President of the Republic of Vanuatu should liaise or consult the Citizenship Commission for appropriate scrutiny and analysis of the proposed applicants' information and documents against the set criteria. Furthermore, honorary citizenship should contain

proper conditions as to privileges or exemptions, not just a citizenship status.

**Recommendation 3:** That the Prime Minister as Minister responsible for citizenship, terminate the members of the Citizenship Commission that made the decision to grant citizenship to Mr Gulbis and review their decisions and any other decisions they made in light of the findings made above. Alternatively, the President of the Republic of Vanuatu exercises his discretion under section 4(2) of the Citizenship Act to remove the Chairman of the current Commission.

**Recommendation 4:** that the Citizenship Commission relies on the set criteria for approving naturalised citizenship. In the event of uncertainty, the Commission should seek legal advice from the State Law Office and on the basis of such legal advice, will it be able to make a sound decision whether or not to approve naturalized citizenship to any applicant.

**Recommendation 5:** That the Prime Minister sees to it that there is less if not no political interference or interests in influencing the Citizenship Commission's decision on granting naturalised citizenship.

**Recommendation 6:** that the Prime Minister and the Citizenship Commission consider urgently to increase application fees for naturalised citizenship from VT16,000 to VT500.000. This may assist in deterring abuse and corrupt practices.

Dated 13 March 2012



**Pasa TOSUSU**  
**OMBUDSMAN OF THE REPUBLIC OF VANUATU**

## **8 INDEX OF APPENDICES**

- A Copy of Birth Certificate provided by Mr Juris Gulbis
- B Copy of Letter of Confirmation for Adoption of Mr Gulbis by Nagriamel Movement
- C Copy of Mr Gulbis Residence Permit before Citizenship granted
- D Copy of VIPA Approval Certificate for Hiram Group (Vanuatu) Limited
- E Copy of Business License Certificate for Hiram Group (Vanuatu) Ltd
- F Copy of the relevant part of the Application, Form - A
- G G1- Copy of support letter from Councillor Lami Sope, President of SHEFA Provincial Council  
G2 - Copy of the relevant part of the Citizenship Commissions meeting of 05<sup>th</sup> Nov 2010.
- H Copy of Mr Gulbis Citizenship Certificate
- I Copy of letter from Leye Eloi Najap, Secretary of Citizenship Commission to Juris Gulbis dated 5 November 2010.
- J Copy of letter from Leye Eloi Najap to Principal passport officer dated 11 November 2011.
- K Copy of letter from Mrs Nadine Alatoa
- L Copy of List of names of Naturalised citizens published in Gazette No 18 of 2011.
- M Relevant laws