NEW ZEALAND
FOREIGN AFFAIRS & TRADE

New Zealand Ministry of
Foreign Affairs and Trade
Manatū Aorere

29 April 2021

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Personal details removed for
proactive release

OIA 27154

Personal details removed for proactive release

I refer to your email of 2 November 2020 in which you request the following under the Official Information Act 1982 (OIA):

> *"…all reports and other communications prepared by the New Zealand High Commission in Apia, Samoa (then Western Samoa), about the Privy Council's decision on Lesa v. Attorney-General of New Zealand delivered in 1982, including the High Commission's analyses and assessments of the implications of that decision and the subsequently proposed and then enacted Citizenship (Western Samoa) Act 1982 on New Zealand's relationship with Samoa (then Western Samoa), together with any response/s from MFAT in Wellington to those reports and communications.*
>
> *Further, I request copies of any briefings, reports, notes or other information sent by MFAT to the then Minister of Foreign Affairs about the Privy Council's decision on Lesa v. Attorney-General of New Zealand delivered in 1982, including the Ministry's analyses and assessments of the implications of that decision and the subsequently proposed and then enacted Citizenship (Western Samoa) Act 1982 on New Zealand's relationship with Samoa (then Western Samoa)."*

On 30 November 2020, we wrote to you advising that we were extending the time limit on your request to 2 February 2021. On 2 February 2021 we wrote to you confirming we had made a decision to release information to you, but we needed to undertake further consultation. This process is now complete and we are releasing the attached documents to you. I apologise for the delay in providing this response which has been necessitated by the amount and historic nature of material in scope of your request, and the consultation required to be undertaken on it.

Some parts of the attachments have been withheld under the following sections of the OIA:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 6(b): to protect the passing of information from another government on a confidential basis; and
- 9(2)(a): to protect individuals' privacy;

Where the information has been withheld under section 9 of the OIA, we have identified no public interest in releasing the information that would be sufficient to override the reasons for withholding it.

On 8 April 2021, you further requested:

> *1. Exactly which people (by job title only) within MFAT, and which (if any) other NZ government agencies/entities, and which (if any) other government/s, and which (if any) other people, have been consulted (including for legal advice) about any aspect of the release of the information that I requested on 2 November 2020; and*
>
> *2. The specific reason/s why anyone other than MFAT employees, including any other NZ government agencies/entities, and any other government/s, and any other people, have been consulted (including for legal advice) about any aspect of the release of the information that I requested on 2 November 2020.*

Your OIA request was centrally managed by the Executive Services team at MFAT which manages the MFAT's OIA requests. Most OIA requests which MFAT receives are reviewed are assigned to the relevant team (in this case the Pacific Polynesia and French Polynesia Division), and reviewed by the Divisional manager and Deputy Secretary responsible for that area. As is usual practice the MFAT Media team (through there central inbox) were advised of the release of official information for their information. The list of MFAT staff (by job title) involved in providing a response to your request is below:

Policy Officer (Pacific Polynesia and French Polynesia Division)
Unit Manager (Pacific Polynesia and French Polynesia Division)
Divisional Manager (Pacific Polynesia and French Polynesia Division)
Deputy Secretary (Pacific and Development Group)
Head of Mission APIA
Senior Adviser (Executive Services Division)
Unit Manager (Executive Services Division)
Divisional Manager (Executive Services Division)
Legal Adviser (Legal Division)
Associate Counsel (Corporate Legal Unit)

The Government of Samoa was consulted through our post in Apia as the matter related to their country and citizens.

The Department of Internal Affairs was consulted given the subject matter was citizenship. The Ministry of Business, Innovation and Employment was consulted regarding immigration issues.

Crown Law was consulted on questions of legal privilege.

The Office of the Minister of Foreign Affairs was consulted under the 'no surprises' convention.

You have the right under section 28(3) of the OIA to seek a review of this response by the Ombudsman.

Nāku noa, nā

Julie-Anne Lee
for Secretary of Foreign Affairs and Trade

311/6/20/1

RESTRICTED: 28 JULY 82.
FROM LONDON
TO WELLINGTON 7496 I M M E D I A T E :

PMD
SECLAB (BOND)
INTERNAL (MCLAY)
JUSTICE (LOWE)
CROWN LAW (NEAZOR)
SFA (LGL, SPA, CON, AUS)

URGENT

CONFIDENTIAL

PRIVY COUNCIL APPEAL NO 43 OF 1981

FALEMA' I LESA V. ATTORNEY-GENERAL.

AT 1100 TODAY 28 JULY ALLEN AND OVERY PASSED COPY TO US OF THEIR LORDSHIPS' REASONS FOR THEIR REPORT TO HER MAJESTY AS THEIR OPINION THAT THE APPEAL BE ALLOWED AND THE QUESTION POSED IN THE ORIGINATING SUMMONS BE ANSWERED IN THE AFFIRMATIVE. THE REASONS WERE DELIVERED BY THEIR LORDSHIPS AT 1015 A.M. ON 28 JULY. READ OF ALLEN AND OVERY NOTED THAT TEXT IS IN TYPESCRIPT (NOT PRINTED) FORM BUT TEXT WILL STAND APART FROM ANY OBVIOUS MISPRINT OR PUNCTUATION ERRORS.

2. READ WAS ADVISED THAT ORDER-IN-COUNCIL WILL BE MADE ''FAIRLY SOON'', MEANING ''NOT MONTHS, BUT WEEKS OR DAYS.''

3. TEXT BEGINS:

PRIVY COUNCIL APPEAL NO.43 OF 1981

FALEMA'I LESA — APPELLANT
V.
ATTORNEY-GENERAL — RESPONDENT
FROM
THE COURT OF APPEAL OF NEW ZEALAND

RESTRICTED

REASONS FOR REPORT OF THE LORDS OF THE JUDICAL COMMITTEE OF THE PRIVY COUNCIL OF THE 19TH JULY 1982, DELIVERED THE 28TH JULY 1982.

71124

PRESENT AT THE HEARING:

LORD DIPLOCK
LORD ELWYN-JONES
LORD KEITH OF KINKEL
LORD BRANDON OF OAKBROOK
SIR JOHN MEGAW

(DELIVERED BY LORD DIPLOCK)

THE APPELLANT WAS BORN IN WESTERN SAMOA ON A DATE BETWEEN THE COMING INTO FORCE OF THE BRITISH NATIONALITY AND STATUS OF ALIENS (IN NEW ZEALAND) ACT, 1928, (''THE ACT OF 1928'') AND ITS REPEAL AND REPLACEMENT BY THE BRITISH NATIONALITY AND NEW ZEALAND CITIZENSHIP ACT, 1948. SHE CLAIMS THAT ON THE TRUE CONSTRUCTION OF THE ACT OF 1928 BY VIRTUE OF HER BIRTH IN WESTERN SAMOA DURING THAT PERIOD SHE BECAME, SO FAR AS NEW ZEALAND LAW IS CONCERNED, A NATURAL-BORN BRITISH SUBJECT AND SHE SEEKS IN THE INSTANT APPEAL A DECLARATION TO THAT EFFECT. IF SHE BE RIGHT ON THE CONSTRUCTION OF THE ACT OF 1928 THE CONSEQUENCE WOULD BE THAT UPON THE COMING INTO FORCE OF THE ACT OF 1928 SHE BECAME UNDER SECTION 16(3) OF THAT ACT A NEW ZEALAND CITIZEN, AND UNDER SECTION 13 OF THE CITIZENSHIP ACT, 1977, HAS CONTINUED TO BE ONE EVER SINCE.

THE IMPORTANCE TO THE APPELLANT OF ESTABLISHING HER NEW ZEALAND CITIZENSHIP IS THAT IT FREES HER FROM ALL RESTRAINTS UPON HER CONTINUED STAY IN NEW ZEALAND THAT ARE IMPOSED ON IMMIGRANTS BY THE IMMIGRATION ACT, 1964. THE APPELLANT IN THE INSTANT CASE IS AN ''OVERSTAYER'', AS WAS THE APPELLANT IN LEVAVE V. IMMIGRATION DEPARTMENT (1979) (LAST 5 WDS U/L) 2 NZLR 74. ON ARRIVAL IN NEW ZEALAND SHE HAD BEEN GRANTED A PERMIT TO STAY FOR A LIMITED PERIOD AND HAD REMAINED IN NEW ZEALAND AFTER THAT PERIOD HAD EXPIRED - AN OFFENCE UNDER SECTION 14(5) OF THE IMMIGRATION ACT, 1964, FOR WHICH

SHE IS CURRENTLY BEING PROSECUTED. LEVAVE V. IMMIGRATION DEPARTMENT (4 WDS U/L) CAME BEFORE THE COURT OF APPEAL UPON AN APPEAL IN A SIMILAR PROSECUTION BEFORE A MAGISTRATE'S COURT, ON WHICH THE DECISION OF THE COURT OF APPEAL IS FINAL., NO FURTHER APPEAL LIES TO HER MAJESTY IN COUNCIL. IT WAS IN ORDER TO ENABLE SUCH FURTHER APPEAL TO BE BROUGHT THAT THE PROCEEDINGS IN THE INSTANT CASE HAVE TAKEN THE FORM OF AN ORIGINATING SUMMONS SEEKING A DECLARATION AS TO THE CONSTRUCTION OF THE ACT OF 1928.

THE DECISION OF THE COURT OF APPEAL IN THE LEVAVE (U/L) CASE TURNED ON THE CONSTRUCTION NOT OF THE ACT OF 1928 BUT OF ITS PREDECESSOR, THE BRITISH NATIONALITY AND STATUS OF ALIENS (IN NEW ZEALAND) ACT, 1923 (''THE ACT OF 1923''). THE WORDING OF THE PROVISION IN THAT ACT PRINCIPALLY RELIED ON BY THE APPELLANT IN THE LEVAVE (U/L) CASE, SECTION 14(1), WAS IDENTICAL TO THE WORDING OF THE ACT OF 1928 THAT IS PRINCIPALLY RELIED ON BY THE APPELLANT IN THE INSTANT CASE, WHICH READS AS FOLLOWS:-

> ''7.(1) SUBJECT TO THE PROVISIONS OF THIS SECTION, THIS ACT SHALL APPLY TO THE COOK ISLANDS AND TO WESTERN SAMOA IN THE SAME MANNER IN ALL RESPECTS AS IF THOSE TERRITORIES WERE FOR ALL PURPOSES PART OF NEW ZEALAND., AND THE TERM 'NEW ZEALAND' AS USED IN THIS ACT SHALL, BOTH IN NEW ZEALAND AND IN THE SAID TERRITORIES RESPECTIVELY, BE CONSTRUED ACCORDINGLY AS INCLUDING THE COOK ISLANDS AND WESTERN SAMOA.''

THERE ARE HOWEVER SUBSTANTIAL DIFFERENCES BETWEN OTHER PROVISIONS OF THE TWO ACTS WHICH FORM THE CONTEXTS IN WHICH THOSE TWO IDENTICALLY WORDED SUBSECTIONS FALL RESPECTIVELY TO BE CONSTRUED. UNFORTUNATELY, IN THE INSTANT CASE, BECAUSE IT WAS COMMON GROUND BETWEEN THE PARTIES THAT THE DECISION OF THE COURT OF APPEAL IN THE LEVAVE (U/L) CASE WAS DECISIVE OF THE INSTANT CASE IN THAT COURT, NO SUBSTANTIVE ARGUMENT BASED UPON THE TERMS OF THE ACT OF 1928, LOOKED AT AS A WHOLE, WAS ADVANCED BY EITHER PARTY IN THE COURTS BELOW., AND, DOUBLY UNFORTUNATELY, THIS RESULTED IN THERE NOT HAVING BEEN BROUGHT TO THE ATTENTION OF THE COURT OF APPEAL A FORMIDABLE ARGUMENT, WHICH MAKES THE COURT OF APPEAL'S REASONING IN THE LEVAVE (U/L) CASE MORE DIFFICULT TO SUSTAIN WHEN IT IS SOUGHT TO APPLY IT TO THE

CONSTRUCTION OF THE ACT OF 1928 INSTEAD OF TO THE CONSTRUCTION OF THE APPELLANT'S WRITTEN CASE TO THIS BORD GAVE NO FOREWARNING, EMERGED FOR THE FIRST TIME IN THE CLOSING STAGES OF THE APPELLANT'S COUNSEL'S OPENING SPEECH. A LESS POWERFUL VARIANT OF THAT ARGUMENT WOULD HAVE BEEN AVAILABLE ON THE CONSTRUCTION OF THE ACT OF 1923, BUT IT HAD NOT BEEN ADVANCED IN THE COURT OF APPEAL BY THE APPELLANT IN THE LEVAVE (U/L) CASE.

THEIR LORDSHIPS WILL ACCORDINGLY GO STRAIGHT TO THE ACT OF 1928 AND FIRST CONSIDER ITS CONSTRUCTION INDEPENDENTLY OF THE ACT OF 1923 WHICH IT REPEALED.

THE PREAMBLE OF THE ACT OF 1928 READS AS FOLLOWS:-

''AN ACT TO ADOPT PART II OF THE BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914 (IMPERIAL), TO MAKE CERTAIN PROVISIONS RELATING TO BRITISH NATIONALITY AND THE STATUS OF ALIENS IN NEW ZEALAND, AND ALSO TO MAKE SPECIAL PROVISIONS WITH RESPECT TO THE NATURALIZATION OF PERSONS RESIDENT IN WESTERN SAMOA.''

SO PART OF ITS PURPORT AND OBJECT IS TO PROVIDE A WAY FOR PERSONS RESIDENT IN WESTERN SAMOA TO BECOME BRITISH SUBJECTS BY NATURALIZATION.

SECTION 2 DEFINES THE ''IMPERIAL ACT'' AS THE BRITISH NATIONALITY AND STATUS OF ALIENS ACT, 1914., AND SECTION 3 PROVIDES

''PART II OF THE IMPERIAL ACT (THE SAID PART BEING SET OUT IN THE FIRST SCHEDULE HERETO) IS HEREBY ADOPTED.''

THE FIRST SCHEDULE SETS OUT IN ITS ENTIRETY PART II OF THE IMPERIAL ACT WHICH BEARS THE HEADING ''NATURALIZATION OF ALIENS''. THOSE SECTIONS SET OUT IN THE FIRST SCHEDULE THAT ARE MOST DIRECTLY RELEVANT TO THE QUESTION OF CONSTRUCTION THAT THEIR LORDSHIPS HAVE TO ANSWER ARE THE FOLLOWING:

''2.(1) THE SECRETARY OF STATE MAY GRANT A CERTIFICATE OF NATURALIZATION TO AN ALIEN WHO MAKES AN APPLICATION FOR THE PURPOSE, AND SATISFIES THE SECRETARY OF STATE -

(A) THAT HE HAS EITHER RESIDED IN HIS MAJESTY'S DOMINIONS FOR A PERIOD OF NOT LESS THAN FIVE YEARS IN THE MANNER REQUIRED BY THIS SECTION, OR BEEN IN THE SERVICE OF THE CROWN FOR NOT LESS THAN FIVE YEARS WITHIN THE LAST EIGHT YEARS BEFORE THE APPLICATION., AND

(B) THAT HE IS OF GOOD CHARACTER AND HAS AN ADEQUATE KNOWLEDGE OF THE ENGLISH LANGUAGE., AND

(C) THAT HE INTENDS IF HIS APPLICATION IS GRANTED EITHER TO RESIDE IN HIS MAJESTY'S DOMINIONS OR TO ENTER OR CONTINUE IN THE SERVICE OF THE CROWN.

(2) THE RESIDENCE REQUIRED BY THIS SECTION IS RESIDENCE IN THE UNITED KINGDOM FOR NOT LESS THAN ONE YEAR IMMEDIATELY PRECEDING THE APPLICATION, AND PREVIOUS RESIDENCE, EITHER IN THE UNITED KINGDOM OR IN SOME OTHER PART OF HIS MAJESTY'S DOMINIONS, FOR A PERIOD OF FOUR YEARS WITHIN THE LAST EIGHT YEARS BEFORE THE APPLICATION.

.....

7(2). WITHOUT PREJUDICE TO THE FOREGOING PROVISIONS THE SECRETARY OF STATE SHALL BY ORDER REVOKE A CERTIFICATE OF NATURALIZATION GRANTED BY HIM IN ANY CASE IN WHICH HE IS SATISFIED THAT THE PERSON TO WHOM THE CERTIFICATE WAS GRANTED EITHER -

(A).....

(B) HAS WITHIN FIVE YEARS OF THE DATE OF THE GRANT OF THE CERTIFICATE BEEN SENTENCED BY ANY COURT IN HIS MAJESTY'S DOMINIONS TO IMPRISONMENT FOR A TERM OF NOT LESS THAN TWELVE MONTHS, OR TO A TERM OF PENAL SERVITUDE, OR TO A FINE OF NOT LESS THAN ONE HUNDRED POUNDS.,

OR

(C).....

(D) HAS SINCE THE DATE OF THE GRANT OF CERTIFICATE BEEN FOR A PERIOD OF NOT LESS THAN SEVEN YEARS ORDINARILY RESIDENT OUR OF HIS MAJESTY'S DOMINIONS, ... AND HAS NOT MAINTAINED SUBSTANTIAL CONNECTION WITH HIS MAJESTY'S DOMINIONS.,

OR

(E) ....

8.(1) THE GOVERNMENT OF ANY BRITISH POSSESSION SHALL HAVE THE SAME POWER TO GRANT A CERTIFICATE OF NATURALIZATION AS THE SECRETARY OF STATE HAS UNDER THIS ACT, AND THE PROVISIONS OF THIS ACT AS TO THE GRANT AND REVOCATION OF SUCH A CERTIFICATE SHALL APPLY ACCORDINGLY, WITH THE SUBSTITUTION OF THE GOVERNMENT OF THE POSSESSION FOR THE SECRETARY OF STATE,

AND THE POSSESSION FOR THE UNITED KINGDOM, AND OF A HIGH COURT OR SUPERIOR COURT OF THE POSSESSION FOR THE HIGH COURT, AND WITH THE OMISSION OF ANY REFERENCE TO THE APPROVAL OF THE LORD CHANCELLOR, AND ALSO, IN A POSSESSION WHERE ANY LANGUAGE IS RECOGNIZED AS ON AN EQUALITY WITH THE ENGLISH LANGUAGE, WITH THE SUBSTITUTION OF THE ENGLISH LANGUAGE OR THAT LANGUAGE FOR THE ENGLISH LANGUAGE:

.....

(2) ANY CERTIFICATE OF NATURALIZATION GRANTED UNDER THIS SECTION SHALL HAVE THE SAME EFFECT AS A CERTIFICATE OF NATURALIZATION GRANTED BY THE SECRETARY OF STATE UNDER THIS ACT.

9.(1) THIS PART OF THIS ACT SHALL NOT, NOR SHALL ANY CERTIFICATE OF NATURALIZATION GRANTED THEREUNDER, HAVE EFFECT WITHIN ANY OF THE DOMINIONS SPECIFIED IN THE FIRST SCHEDULE TO THIS ACT, UNLESS THE LEGISLATURE OF THAT DOMINION ADOPTS THIS PART OF THIS ACT.

(2) WHERE THE LEGISLATURE OF ANY SUCH DOMINION HAS ADOPTED THIS PART OF THIS ACT, THE GOVERNMENT OF THE DOMINION SHALL HAVE THE LIKE POWERS TO MAKE REGULATIONS WITH RESPECT TO CERTIFICATES OF NATURALIZATION AND TO OATHS OF ALLEGIANCE AS ARE CONFERRED BY THIS ACT ON THE SECRETARY OF STATE.

(3) THE LEGISLATURE OF ANY SUCH DOMINION WHICH ADOPTS THIS PART OF THIS ACT MAY PROVIDE HOW AND BY WHAT DEPARTMENT OF THE GOVERNMENT THE POWERS CONFERRED BY THIS PART OF THIS ACT ON THE GOVERNMENT OF A BRITISH POSSESSION ARE TO BE EXERCISED.

(4).....''

THESE WERE PROVISIONS CONTAINED IN AN ACT OF THE UNITED KINGDOM PARLIAMENT, TO WHICH THE UNITED KINGDOM INTERPRETATION ACT, 1889, APPLIED. SO FAR AS IS RELEVANT, THE DEFINITION IN THE INTERPRETATION ACT 1889 OF THE EXPRESSION ''BRITISH POSSESSION'' WHICH APPEARS IN SECTIONS 8 AND 9 OF THE FIRST SCHEDULE TO THE ACT OF 1928 WAS ''ANY PART OF HER MAJESTY'S DOMINIONS EXCLUSIVE OF THE UNITED KINGDOM''.

IT FOLLOWS THAT UNLESS, DURING THE PERIOD BETWEEN THE COMING INTO EFFECT OF THE ACT OF 1928 AND ITS REPEAL BY THE ACT OF 1948, WESTERN SAMOA WAS TO BE TREATED, FOR THE PURPOSES OF THE ACT OF 1928, AS PART OF HIS MAJESTY'S DOMINIONS, THE COMBINED EFFECT OF SECTION 8(1) AND 2(1) AND (2) OF THE IMPERIAL ACT SET OUT IN THE FIRST SCHEDULE OF THE ACT OF 1928 WOULD HAVE BEEN THAT PAST RESIDENCE IN WESTERN SAMOA COULD NOT ENABLE A PERSON TO ACQUIRE THE NECESSARY QUALIFICATION FOR NATURALIZATION UNDER SECTION 2(1)(A) AND (2). NOR WOULD AN INTENTION OF FUTURE RESIDENCE IN WESTERN SAMOA SATISFY THE REQUIREMENTS OF SECTION 2(1)(C)., ON THE CONTRARY, SEVEN YEARS' RESIDENCE IN WESTERN SAMOA AFTER NATURALIZATION WOULD RENDER A PERSON'S CERTIFICATE OF NATURALIZATION LIABLE TO REVOCATION UNDER SECTION 7(2)(D). THE ADOPTION OF PART II OF THE IMPERIAL ACT WOULD, THEREFORE, NOT BE SUFFICIENT OF ITSELF TO EFFECT THE OBJECT EXPRESSED IN THE PREAMBLE OF THE ACT OF 1928 ''TO MAKE SPECIAL PROVISIONS WITH RESPECT TO THE NATURALIZATION OF PERSONS RESIDENT IN WESTERN SAMOA'', UNLESS THE EFFECT OF SECTION 7(1) WAS TO REQUIRE WESTERN SAMOA TO BE TREATED AS BEING ''IN HIS MAJESTY'S DOMINIONS'' FOR THE PURPOSES OF THE PROVISIONS CONTAINED IN THE FIRST SCHEDULE.

SECTION 6 OF THE ACT OF 1928 WHICH, ALTHOUGH EXPRESSED MORE SUCCINCTLY, IS SUBSTANTIALLY TO THE SAME EFFECT AS SECTION 3 OF THE ACT OF 1923, READS AS FOLLOWS:-

> ''6. THE SEVERAL PROVISIONS OF THE IMPERIAL ACTS SET FORTH IN THE SECOND SCHEDULE TO THIS ACT, IN SO FAR AS THE SAID PROVISIONS ARE CAPABLE OF APPLICATION IN NEW ZEALAND, ARE HEREBY DECLARED TO BE PART OF THE LAW OF NEW ZEALAND.''

THE PROVISIONS OF THE IMPERIAL ACTS SET OUT IN THE SECOND SCHEDULE WHICH ARE DIRECTLY RELEVANT TO THE INSTANT APPEAL ARE IN PART I OF THE IMPERIAL ACT OF 1914 UNDER THE HEADING ''NATURAL-BORN BRITISH SUBJECTS''. THEY ARE:-

> ''1. (1) THE FOLLOWING PERSONS SHALL BE DEEMED TO BE NATURAL-BORN BRITISH SUBJECTS NAMELY:-
> (A) ANY PERSONS BORN WITHIN HIS MAJESTY'S DOMINIONS AND ALLEGIANCE., AND
> (B) ANY PERSON BORN OUT OF HIS MAJESTY'S DOMINIONS WHOSE FATHER WAS, AT THE TIME OF THAT PERSON'S BIRTH, A BRITISH SUBJECT, AND WHO FULFILS ANY OF THE FOLLOWING CONDITIONS, THAT IS TO SAY, IF EITHER -
> (I) HIS FATHER WAS BORN WITHIN HIS MAJESTY'S ALLEGIANCE., OR
> (II) HIS FATHER WAS A PERSON TO WHOM A CERTIFICATE OF NATURALIZATION HAD BEEN GRANTED., OR

(III) HIS FATHER HAD BECOME A BRITISH SUBJECT BY REASON OF ANY ANNEXATION OF TERRITORY., OR

(IV) HIS FATHER WAS AT THE TIME OF THAT PERSON'S BIRTH IN THE SERVICE OF THE CROWN., OR

(V) HIS BIRTH WAS REGISTERED AT A BRITISH CONSULATE WITHIN ONE YEAR OR IN SPECIAL CIRCUMSTANCES, WITH THE CONSENT OF THE SECRETARY OF STATE, TWO YEARS AFTER ITS OCCURRENCE, OR, IN THE CASE OF A PERSON BORN ON OR AFTER THE FIRST DAY OR JANUARY, NINETEEN HUNDRED AND FIFTEEN, WHO WOULD HAVE BEEN A BRITISH SUBJECT IF BORN BEFORE THAT DATE, WITHIN TWELVE MONTHS AFTER THE FIRST DAY OR AUGUST, NINETEEN HUNDRED AND TWENTY-TWO., AND

(C) ANY PERSON BORN ON BOARD A BRITISH SHIP, WHETHER IN FOREIGN TERRIROTIRAL WATERS OR NOT:

PROVIDED THAT THE CHILD OF A BRITISH SUBJECT, WHETHER THAT CHILD WAS BORN BEFORE OR AFTER THE PASSING OF THIS ACT, SHALL BE DEEMED TO HAVE BEEN BORN WITHIN HIS MAJESTY'S ALLEGIANCE IF BORN IN A PLACE WHERE BY TREATY, CAPITULATION, GRANT, USAGE, SUFFERANCE, OR OTHER LAWFUL MEANS, HIS MAJESTY EXERCISES JURISDICTION OVER BRITISH SUBJECTS:''

IN THE INSTANT CASE THE APPELLANT'S CLAIM TO HAVE BEEN A NATURAL-BORN BRITISH SUBJECT AT THE TIME OF THE PASSING OF THE ACT OF 1948, AND THEREFORE TO HAVE THEN BECOME A CITIZEN OF NEW ZEALAND, IS BASED ON THE PROPOSITION THAT THE EFFECT OF SECTION 7(1) OF THE ACT OF 1928 IS TO REQUIRE WESTERN SAMOA TO BE TREATED AS ''WITHIN HIS MAJESTY'S DOMINIONS AND ALLEGIANCE'' FOR THE PURPOSES OF THE PROVISIONS OF SECTION 1 OF THE IMPERIAL ACT CONTAINED IN THE SECOND SCHEDULE TO THE ACT OF 1928. SO IT IS SECTION 7 THAT IS CRUCIAL TO HER CLAIM TO BE A NATURAL-BORN BRITISH SUBJECT IN NEW ZEALAND LAW DESPITE THE FACT THAT SHE WOULD NOT BE DEEMED A NATURAL-BORN BRITISH SUBJECT UNDER THE IMPERIAL ACT ITSELF.

FOR CONVENIENCE OF REFERENCE THEIR LORDSHIPS SET SECTION 7 OUT HERE IN FULL ALTHOUGH THIS INVOLVES REPETITION OF SUBSECTION (1) WHICH HAS ALREADY BEEN CITED IN THIS OPINION:-

''7.(1) SUBJECT TO THE PROVISIONS OF THIS SECTION, THIS ACT SHALL APPLY TO THE COOK ISLANDS AND TO WESTERN SAMOA IN THE SAME MANNER IN ALL RESPECTS AS IF THOSE TERRITORIES WERE FOR ALL PURPOSES PART OF NEW ZEALAND., AND THE TERM 'NEW ZEALAND' AS USED IN THIS ACT SHALL, BOTH IN NEW ZEALAND AND THE SAID

TERRITORIES RESPECTIVELY, BE CONSTRUED ACCORDINGLY AS INCLUDING THE COOK ISLANDS AND WESTERN SAMOA.

(2) IN THE APPLICATION OF THIS ACT TO THE COOK ISLANDS AND WESTERN SAMOA -

(A) THE POWER TO GRANT CERTIFICATES OF NATURALIZATION SHALL BE VESTED IN THE GOVERNOR-GENERAL, AND IN THE CASE OF A PERSON RESIDENT IN THE COOK ISLANDS SHALL BE EXERCISED ON THE RECOMMENDATION OF THE MINISTER FOR THE COOK ISLANDS, AND IN THE CASE OF A PERSON RESIDENT IN WESTERN SAMOA SHALL BE EXERCISED ON THE RECOMMENDATION OF THE MINISTER OF EXTERNAL AFFAIRS:

(B) THE OATH OF ALLEGIANCE SHALL BE TAKEN BEFORE A JUDGE OR COMMISSIONER OF THE HIGH COURT OF THE COOK ISLANDS, OR A JUDGE OR COMMISSIONER OF THE HIGH COURT OF WESTERN SAMOA, AS THE CASE MAY REQUIRE, AND EVERY SUCH JUDGE AND COMMISSIONER IS HEREBY RESPECTIVELY AUTHORIZED TO ADMINISTER THE SAID OATH ACCORDINGLY:

(C) THE POWERS CONFERRED BY SECTION FIVE OF THE IMPERIAL ACT, IN ITS APPLICATION TO NEW ZEALAND, SHALL BE VESTED IN THE GOVERNOR-GENERAL:

(D) THE POWERS CONFERRED BY SECTIONS SEVEN AND SEVEN A OF THE IMPERIAL ACT, IN ITS APPLICATION TO NEW ZEALAND, SHALL BE EXERCISED ONLY BY THE GOVERNOR-GENERAL IN COUNCIL.''

SUBSECTION (1) IS IN TWO PARTS SEPARATED BY A SEMI-COLON. THE SECOND PART AFTER THE SEMI-COLON IS MERELY AN INTERPRETATION PROVISION GIVING TO THE EXPRESSION ''NEW ZEALAND'', WHEREVER IT APPEARS IN THE ACT OF 1928, A MORE EXTENDED MEANING THAN IT WOULD OTHERWISE BEAR BY VIRTUE OF SECTION 4 OF THE ACTS INTERPRETATION ACT 1924, VIZ. ''THE DOMINION OF NEW ZEALAND, COMPRISING ALL ISLANDS AND TERRITORIES WITHIN THE LIMITS THEREOF FOR THE TIME BEING OTHER THAN THE COOK ISLANDS''.

THE FIRST PART OF SUBSECTION (1), HOWEVER APPEARS TO STATE EMPHATICALLY AND UNEQUIVOCALLY THAT THE WHOLE OF THE ACT, SUBJECT ONLY TO SUCH MODIFICATIONS AS ARE CONTAINED IN SECTION 7 ITSELF, I.E. IN SUBSECTION (2), ARE TO APPLY BOTH TO THE COOK ISLANDS AND TO WESTERN SAMOA IN THE SAME MANNER IN ALL RESPECTS AS IF THOSE TERRITORIES WERE FOR ALL PURPOSES PART OF NEW ZEALAND. THE REFERENCE

TO THEIR BEING ''PART OF NEW ZEALAND'' ECHOES, IN THE CASE OF THE COOK ISLANDS, THE ORDER IN COUNCIL OF 1921, REFERRED TO IN THE PREAMBLE TO THE COOK ISLANDS ACT, 1915, UNDER WHICH IT WAS ORDERED THAT THE COOK ISLANDS ''SHOULD FORM PART OF NEW ZEALAND''., AND, IN THE CASE OF WESTERN SAMOA, ARTICLE 2 OF THE LEAGUE OF NATIONS MANDATE FOR GERMAN SAMOA SCHEDULED TO THE SAMOA ACT, 1921, WHICH PROVIDED:

> ''THE MANDATORY SHALL HAVE FULL POWER OF ADMINISTRATION AND LEGISLATION OVER THE TERRITORY, SUBJECT TO THE PRESENT MANDATE, AS AN INTEGRAL PORTION OF THE DOMINION OF NEW ZEALAND TO THE TERRITORY, SUBJECT TO SUCH LOCAL MODIFICATIONS AS CIRCUMSTANCES MAY REQUIRE.
>
> THE MANDATORY SHALL PROMOTE TO THE UTMOST THE MATERIAL AND MORAL WELL-BEING AND THE SOCIAL PROGRESS OF THE INHABITANTS OF THE TERRITORY SUBJECT TO THE PRESENT MANDATE.''

SINCE IN 1928 NEW ZEALAND FORMED PART OF HIS MAJESTY'S DOMINIONS AND WAS WITHIN HIS MAJESTY'S ALLEGIANCE, IF THE ACT IS TO APPLY TO WESTERN SAMOA ''IN THE SAME MANNER IN ALL RESPECTS'' AS IF THAT GEOGRAPHICAL AREA WERE ''FOR ALL PURPOSES PART OF NEW ZEALAND'', THUS UNAMBIGUOUS MEANING OF SECTION 7(1) WOULD APPEAR TO BE THAT WESTERN SAMOA AS WELL AS NEW ZEALAND PROPER AND THE COOK ISLANDS MUST BE TREATED AS PART OF HIS MAJESTY'S DOMINIONS AND WITHIN HIS MAJESTY'S ALLEGIANCE, IN EVERY CASE WHERE THE STATUS OF ANY PERSON IN NEW ZEALAND EITHER AS A NATURAL-BORN BRITISH SUBJECT OR AS AN ALIEN ELIGIBLE FOR NATURALIZATION AS A BRITISH SUBJECT DEPENDS UPON HIS, OR HIS FATHER'S, HAVING BEEN BORN IN WESTERN SAMOA OR, IN THE CASE OF ELIGIBILITY FOR NATURALIZATION, UPON HIS HAVING RESIDED THERE.

IT IS, IN THEIR LORDSHIPS' VIEW, IMPOSSIBLE TO READ DOWN SECTION 7(1) OF THE ACT OF 1928, AS CONFINED TO THE NATURALIZATION OF ALIENS RESIDING IN THE COOK ISLANDS AND WESTERN SAMOA, AS THE

COURT OF APPEAL FELT ABLE TO DO WITH THE CORRESPONDING SECTION 14(1) OF THE ACT OF 1923 IN THE LEVAVE (U/L) CASE. SECTION 7(2)(A) PLAINLY CONTEMPLATES THAT RESIDENCE IN WESTERN SAMOA DURING THE YEAR IMMEDIATELY PRECEDING AN APPLICATION SHALL CONSTITUTE THE RESIDENCE REQUIRED TO QUALIFY FOR NATURALIZATION UNDER SECTION 2(1)(A) AND (2) OF THE IMPERIAL ACT SET OUT IN THE FIRST SCHEDULE AS APPLICABLE IN NEW ZEALAND WITH THE MODIFICATIONS FOR WHICH SECTION 8(1) OF THE IMPERIAL ACT THE REQUIRED RESIDENCE MUST HAVE BEEN ''IN HIS MAJESTY'S DOMINIONS'' AND, UNDER SECTION 2(2) AS MODIFIED BY SECTION 8(1), THE RESIDENCE FOR NOT LESS THAN ONE YEAR IMMEDIATELY PRECEDING THE APPLICATION MUST BE IN A PART OF HIS MAJESTY'S DOMINIONS EXCLUSIVE OF THE UNITED KINGDOM. SO IF SECTION 7(1) AND (2) HAD ANY EFFECT AT ALL IN NEW ZEALAND LAW TO ENABLE ALIENS RESIDENT IN WESTERN SAMOA TO BE NATURALIZED AS BRITISH SUBJECTS, WHICH WAS ONE OF THE OBJECTS STATED IN THE PREAMBLE TO THE ACT, SECTION 7(1) MUST HAVE HAD THE EFFECT OF REQUIRING THE TERRITORY OF WESTERN SAMOA TO BE INCLUDED IN THE DESCRIPTION ''HIS MAJESTY'S DOMINIONS'' WHEREVER THAT EXPRESSION IS USED IN THE PROVISIONS OF THE IMPERIAL ACT SET OUT IN THE FIRST SECHEDULE TO THE ACT OF 1928, AND ALSO INCLUDED IN THE DESCRIPTION ''BRITISH POSSESSION'' IN SECTION 8(1) OF THE IMPERIAL ACT.

IF THIS BE SO, AND IT SEEMS TO THEIR LORDSHIPS TO BE INESCAPABLE, IT WOULD SEEM ALSO TO FOLLOW FROM THE EMPHATIC GENERALITY OF SECTION 7(1) - ''IN THE SAME MANNER IN ALL RESPECTS'' AND ''FOR ALL PURPOSES PART OF NEW ZEALAND'' - THAT THE SECTION REQUIRES THAT THE TERRITORY OF WESTERN SAMOA IS TO BE TREATED AS INCLUDED IN THE DESCRIPTION ''HIS MAJESTY'S DOMINIONS AND ALLEGIANCE'' IN THE DEFINITION OF PERSONS WHO SHALL BE DEEMED TO BE NATURAL-BORN BRITISH SUBJECTS IN SECTION 1 OF THE IMPERIAL ACT SET OUT IN THE SECOND SCHEDULE AND

DECLARED TO BE PART OF THE LAW OF NEW ZEALAND BY SECTION 6 OF THE ACT OF 1928. THE ONLY DISTINCTION BETWEEN THIS DESCRIPTION AND THE CORRESPONDING DESCRIPTION OF TERRITORY IN PART II OF THE IMPERIAL ACT, BIRTH WITHIN WHICH CONFERS THE STATUS OF A NATURAL-BORN BRITISH SUBJECT, IS THE ADDITION OF THE WORDS ''AND ALLEGIANCE''. BUT IS IS HORN BOOK LAW, OR AT ANY RATE WELL-ESTABLISHED AS LONG AGO AS CALVIN'S CASE (LAST 2 U/L) (1608) 7 CO.REP.1A THAT A PERSON BORN WITHIN HIS MAJESTY'S DOMINIONS DID BY VIRTUE OF HIS BIRTH THERE OF ITSELF OWE NATURAL ALLEGIANCE TO HIS MAJESTY, UNLESS HE WAS BORN THERE EITHER (A) AS A CHILD TO THE DIPLOMATIC REPRESENTATIVE OF A FOREIGN STATE OR, TO USE THE OLDER TERMINOLOGY, A ''PUBLIC MINISTER'' OF A FOREIGN STATE, WHO AT COMMON LAW (WHICH IN THIS RESPECT FOLLOWED THE LAW OF NATIONS) OWED NO ALLEGIANCE, EVEN LOCAL, TO THE SOVERIENG TO WHOM HE WAS ACCREDITED ((COMMENCE UNDERLINING) MAGDALENA STEAM NAVIGATION CO. V. MARTIN (END UNDERLINING) (1859) 2 EL. AND EL.94)., OR (B) WAS BORN AS A CHILD OF A MEMBER OF AN INVADING FORCE OF AN ENEMY POWER OR OF AN ALIEN INAN ENEMY-OCCUPIED PART OF HIS MAJESTY'S DOMINIONS.

THE REASONS WHY IN SUB-PARAGRAPH (I) OF PARAGRAPH (B) OF SECTION 1(1), WHICH DEALS WITH BRITISH SUBJECTS BY DESCENT, THE REFERENCE TO THE FATHER OF APERSON CLAIMING TC BE A NATURAL-BORN BRITISH SUBJECT, REFERS ONLY TO THE FATHER'S HAVING BEEN BORN ''WITHIN HIS MAJESTY'S ALLEGIANCE'' AND OMITS ANY REFERENCE TO HIS HAVING BEEN BORN WITHIN HIS MAJESTY'S DOMINIONS, ARE TO BE FOUND MAINLY IN THE FIRST PROVISO WHICH REFERS TO FOREIGN TERRITORIES IN WHICH THE CROWN EXERCISED JURISDICTION OVER BRITISH SUBJECTS UNDER THE FOREIGN JURISDICTION ACT 1890 ALTHOUGH SUCH TERRITORIES DID NOT FORM PART OF HIS MAJESTY'S DOMINIONS. MOST OTHER BRITISH SUBJECTS BORN IN FOREIGN TERRITORY BUT YET WITHIN HIS MAJESTY'S ALLEGIANCE, SUCH AS CHILDREN BORN TO BRITISH DIPLOMATS IN THE FOREIGN STATE TO WHICH THEY WERE ACCREDITED AND CHILDREN BORN TO MALE MEMBERS OF BRITISH FORCES ON FOREIGN SOIL, WOULD BE COVERED BY SUB-PARAGRAPH (B)(IV) OF SECTION 1(1) OF THE IMPERIAL ACT BUT THE HEIR TO THE THRONE AND THE CHILDREN OF

THE SOVEREIGN IF BORN ABROAD WOULD BE BORN WITHIN HIS MAJESTY'S ALLEGIANCE BUT NOT WITHIN HIS DOMINIONS AND SUB-PARAGRAPH (B)(I) CATERS FOR THEM ALSO.

THEIR LORDSHIPS THEREFORE CANNOT SEE HOW ANY PRINCIPLE OF CONSTRUCTION WOULD JUSTIFY THEM IN HOLDING ON THE ONE HAND THAT SECTION 7(1) REQUIRED WESTERN SAMOA TO BE TREATED IN THE SAME WAY AS IF IT WERE PART OF NEW ZEALAND IN THE RESPECT THAT NEW ZEALAND WAS ''IN HIS MAJESTY'S DOMINIONS'' FOR THE PURPOSES OF THE PROVISION OF PART II OF THE IMPERIAL ACT DECLARED TO BE ADOPTED BY SECTION 3 OF THE ACT OF 1928, (AS IT MUST BE IF THE DECLARED OBJECT OF THE ACT OF MAKING PROVISION FOR THE NATURALIZATION OF PERSONS RESIDENT IN WESTERN SAMOA IS NOT TO BE UTTERLY DEFEATED), YET WOULD JUSTIFY THEM ON THE OTHER HAND IN HOLDING THAT SECTION 7(1) DID NOT (U/L) REQUIRE WESTERN SAMOA TO BE TREATED AS IF IT WERE PART OF NEW ZEALAND IN THE RESPECT THAT NEW ZEALAND WAS WITHIN ''HIS MAJESTY'S DOMINIONS AND ALLEGIANCE'' OR ''WITHIN HIS MAJESTY'S ALLEGIANCE'' FOR THE PURPOSE OF SECTION 1(1) OF THE IMPERIAL ACT DECLARED BY SECTION 6 OF THE ACT OF 1928 TO BE PART OF THE LAW OF NEW ZEALAND.

IN THEIR LORDSHIPS' VIEW, THERE IS NO ESCAPING THAT SECTION 7(1) OF THE ACT OF 1928 MEANS WHAT IT SO EMPHATICALLY AND UNEQUIVOCALLY SAYS: A PERSON BORN OR RESIDENT IN WESTERN SAMOA IS TO BE TREATED IN THE SAME MANNER IN ALL RESPECTS FOR ALL THE PURPOSES OF THE ACT OF 1928 AS IF HE HAD BEEN BORN OR RESIDENT IN NEW ZEALAND PROPER.

THEIR LORDSHIPS NOW TURN TO A CONSIDERATION OF THE REASONING OF THE COURT OF APPEAL IN THE LEVAVE (U/L) CASE (SUPRA). THEY EMPHASISE THAT WHAT FELL TO BE CONSTRUED IN THAT CASE WAS THE ACT OF 1923. ITS TERMS PRESENTED LESS FORMIDABLE OBSTACLES TO CONSTRUING SECTION 14(1) OF THAT ACT AS CONFINED TO THE NATURALIZATION OF ALIENS RESIDING IN THE COOK ISLANDS AND WESTERN SAMOA THAN THE OBSTACLES WHICH IN THEIR LORDSHIPS' VIEW PREVENT A SIMILAR LIMITED

CONSTRUCTION BEING GIVEN TO SECTION 7 OF THE ACT OF 1928. THE ACT OF 1923 DECLARED TO BE PART OF THE LAW OF NEW ZEALAND THOSE PROVISIONS OF THE IMPERIAL ACT THAT WERE SUBSEQUENTLY SET OUT IN SCHEDULE 2 OF THE ACT OF 1928, INCLUDING, IN PARTICULAR, SECTION 1 OF THE IMPERIAL ACT DEFINING NATURAL-BORN BRITISH SUBJECTS, BUT IT DID NOT ADOPT PART II OF THE IMPERIAL ACT. INSTEAD, BY SECTIONS 4 TO 12, THE ACT OF 1923 PROVIDED FOR ITS OWN SYSTEM OF LOCAL NATURALIZATION. THE RELEVANT QUALIFICATION FOR LOCAL NATURALIZATION WAS DEALT WITH BY SECTIONS 4 AND 5. IT WAS RESIDENCE ''WITHIN NEW ZEALAND'' AND THUS, BY THE EXTENDED DEFINITION OF NEW ZEALAND FOR WHICH THE SECOND PART OF SECTION 14(1) PROVIDED, INCLUDED RESIDENCE IN THE COOK ISLANDS OR WESTERN SAMOA. THE ONLY REFERENCE TO ''HIS MAJESTY'S DOMINIONS'' IN THE NATURALIZATION PROVISIONS OCCURRED IN SECTION 5(1)(C) WHICH REQUIRED THE MINISTER TO BE SATISFIED THAT THE APPLICANT FOR NATURALIZATION INTENDED ''TO CONTINUE TO RESIDE IN HIS MAJESTY'S DOMINIONS, OR TO ENTER, OR CONTINUE IN, THE SERVICE OF THE CROWN''.

THIS PROVISION DOES NOT APPEAR TO HAVE BEEN DRAWN TO THE ATTENTION OF THE COURT OF APPEAL IN THE LEVAVE (U/L) CASE. IF IT HAD BEEN ONE DOES NOT KNOW HOW IT WOULD HAVE AFFECTED THAT COURT'S DECISION. IT IS NECESSARILY IMPLICIT IN THE REFERENCE TO ''CONTINUE TO RESIDE'' THAT RESIDENCE IN WESTERN SAMOA WHICH QUALIFIED THE APPLICANT FOR THE GRANT OF A CERTIFICATE OF NATURALIZATION WAS TREATED BY THE DRAFTSMAN AS RESIDENCE IN HIS MAJESTY'S DOMINIONS. FURTHERMORE, IF IT WERE RIGHT THAT THE FIRST PART OF SECTION 14(1) DID NOT HAVE THE EFFECT OF REQUIRING WESTERN SAMOA TO BE TREATED AS PART OF NEW ZEALAND THEREFORE WITHIN HIS MAJESTY'S DOMINIONS, AT ANY RATE FOR THE PURPOSES OF SECTION 5(1)(C) OF THE ACT OF 1923, SECTIONS 4 AND 5 WOULD HAVE THE RESULT THAT ALIENS RESIDENT IN WESTERN SAMOA COULD NOT OBTAIN NATURALIZATION, IF THEY INTENDED TO GO ON RESIDING

THERE BUT COULD ONLY OBTAIN IT IF THEY WANTED TO EMIGRATE FROM WESTERN SAMOA TO NEW ZEALAND PROPER OR TO THE COOK ISLANDS. THIS RESULT CAN HARDLY HAVE BEEN THAT INTENDED BY THE NEW ZEALAND PARLIAMENT., AND BECAUSE THE COURT OF APPEAL WERE NOT REFERRED TO SECTION 5(1)(C), IT IS NOT WHAT THE COURT OF APPEAL REGARDED AS BEING THE EFFECT OF SECTION 14(1) ON THE NATURALIZATION PROVISIONS OF THE ACT.

IN REFERRING TO THE LANGUAGE OF THE FIRST PART OF SECTION 14(1) OF THE ACT OF 1923, THE COURT OF APPEAL IN THE LEVAVE (U/) CASE OMITTED WHAT IN THEIR LORDSHIPS' VIEW ARE THE IMPORTANT WORDS, ''IN THE SAME MANNER IN ALL RESPECTS''. IF EFFECT IS GIVEN TO THESE WORDS IT IS NOT IN THEIR LORDSHIPS' VIEW POSSIBLE TO SAY THAT THE ONLY NATURAL MEANING OF THE FIRST PART OF THE SUBSECTION IS THAT NATURAL-BORN BRITISH SUBJECTS BORN WITHIN HIS MAJESTY'S DOMINIONS AND ALLEGIANCE ARE TO BE TREATED AS NATURAL-BORN BRITISH SUBJECTS UNDER THE LAW OF THE COOK ISLANDS AND THE LAW OF WESTERN SAMOA. IT IS NOT SUGGESTED HOW SUCH A LIMITED PROVISION COULD AFFECT THE STATUS OF SUCH PERSONS IN EITHER TERRITORY. NOR, IN THEIR LORDSHIPS' VIEW, IS ANY GROUND FOR FAILING TO GIVE TO SECTION 14(1) WHAT WOULD OTHERWISE BE ITS PLAIN MEANING PROVIDED BY THE FACT THAT THE SUBSECTION WOULD HAVE GREATER CONSEQUENCES IN WESTERN SAMOA, SINCE THE COOK ISLANDS WERE ALREADY PART OF HIS MAJESTY'S DOMINIONS AND SO LONG AS THEY REMAINED SO PERSONS BORN THERE WOULD BE DEEMED TO BE NATURAL-BORN BRITISH SUBJECTS WITHOUT THE ASSISTANCE OF SECTION 14(1).

THE STRONGEST ARGUMENT RELIED ON IN THE LEVAVE (U/L) CASE IN FAVOUR OF GIVING TO THE ACT OF 1923 A CONSTRUCTION THAT DID NOT INVOLVE TREATING AS A BRITISH NATIONAL IN NEW ZEALAND PERSONS BORN IN WESTERN SAMOA AFTER THE PASSING OF THE ACT IS TO BE FOUND IN THE RESOLUTIONS OF THE

COUNCIL OF THE LEAGUE OF NATIONS RESOLVED UPON IN 1923 SHORTLY BEFORE THE ACT WAS PASSED. THEY ARE SET OUT IN THE JUDGMENT. THEIR MEANING IS NOT EXPRESSED WITH CRYSTAL CLARITY, BUT IT WOULD BE RIGHT TO SAY THAT THEY DEPRECATE THE AUTOMATIC BESTOWAL OF THE NATIONALITY OF THE MANDATORY POWER UPON INHABITANTS OF THE MANDATORY TERRITORY., THOUGH THERE WOULD APPEAR TO BE SOME INCONSISTENCY HERE WITH THE PROVISION IN ARTICLE 2 OF THE TERMS OF THE MANDATE THAT WESTERN SAMOA WAS TO BE GOVERNED AS AN ''INTEGRAL PORTION OF THE DOMINION OF NEW ZEALAND''. THE ACT OF 1923 SPOKE FOR THE FUTURE., IT DID NOT ON ANY VIEW OF ITS CONSTRUCTION BESTOW NEW ZEALAND NATIONALITY UPON ANY NATIVE INHABITANTS OF SAMOA BORN BEFORE THE PASSING OF THE ACT., THEY RETAINED WHATEVER NATIONALITY, IF ANY, THEY HAD PREVIOUSLY POSSESSED. DESPITE THE FACT THAT THE RESOLUTIONS DID NOT IMPOSE UPON THE GOVERNMENT OF NEW ZEALAND ANY OBLIGATION BINDING UPON IT IN INTERNATIONAL LAW, THEIR LORDSHIPS AGREE WITH THE COURT OF APPEAL THAT THE RESOLUTIONS WOULD BE RELEVANT IN RESOLVING ANY AMBIGUITY IN THE MEANING OF THE LANGUAGE WHICH IS COMMON TO SECTION 14(1) OF THE ACT OF 1923 AND SECTION 7(1) OF THE ACT OF 1928. THEY ARE, HOWEVER, UNABLE, FOR THE REASONS ALREADY STATED, TO DISCERN ANY AMBIGUITY OR LACK OF CLARITY IN THAT LANGUAGE IN ITS APPLICATION TO SECTION 1 OF THE IMPERIAL ACT ADOPTED AS PART OF THE LAW OF NEW ZEALAND BY BOTH THE ACT OF 1923 AND THE ACT OF 1928.

FOR THESE REASONS THEIR LORDSHIPS WILL HUMBLY ADVISE HER MAJESTY THAT THIS APPEAL SHOULD BE ALLOWED, AND THE QUESTION ASKED IN THE ORIGINATING SUMMONS SHOULD BE ANSWERED YES. THE RESPONDENT MUST PAY THE APPELLANT'S COSTS OF THIS APPEAL. AS THE POINT ON WHICH THE APPELLANT HAS SUCCEEDED WAS NOT RPT NOT TAKEN IN THE COURT OF APPEAL EACH PARTY SHOULD BEAR THEIR OWN COSTS IN THAT COURT.

COL 7496
GR 5000 APPX
28/1402/LON

31/6/2011

RESTRICTED

RESTRICTED 01 SEPTEMBER 1982
FROM [redacted]IA
TO WELLINGTON 1232 -ROUTINE-

SECLAB
PMD
INTERNAL(MCLAY)
JUSTICE (LOWE)
EDUCATION
SFA(CON,SPA,LGL)

ADMINISTRATIVE ACTION FOLLOWING CONFIRMATION OF PROTOCOL YOUR 1326 OF 20.8.82.

OUR IMMIGRATION RECORDS DO NOT HAVE A SEPARATE 'BLACKLIST' AS SUCH. THE MAJORITY OF TEMPORARY PERMIT APPLICATIONS ARE IN CARD FORM AND ONCE PROCESSED ARE FILED IN ALPHABETICAL ORDER IN 50 CARD INDEX DRAWERS. ONCE ADVICE IS RECEIVED THAT AN INDIVIDUAL HAS OVERSTAYED OR HAS BEEN DEPORTED A SUITABLE NOTATION IS MADE ON THE RELEVANT CARD THUS FORMING A 'BLACKLIST'. ALL APPLICATIONS ARE CHECKED AGAINST THIS INDEX DURING PROCESSING AND WE EXPECT THAT WE SHOULD BE ABLE TO IDENTIFY THOSE INDIVIDUALS WHO WILL COME WITHIN THE CATEGORIES WHOSE 'BLACKLISTING' SHOULD CEASE. RATHER THAN PURGE THE 'BLACKLIST' AS INTIMATED IN YOUR PARA 1 WE WOULD PREFER TO RETAIN CARDS IN THE SYSTEM AND SIMPLY IGNORE OUR NOTATION.

2. WE COULD PROBABLY IDENTIFY THOSE WHOSE CONVICTIONS ARE TO BE QUASHED - YOUR PARA 7 - BUT GIVEN THE SIZE OF OUR SYSTEM THIS WOULD BE A MAJOR AND TIME CONSUMING TASK. IMMIGRATION DIVISION PRODUCES AN ALPHABETICAL LIST OF ALL DEPORTEES ANNUALLY WHICH WE THINK SHOULD CONTAIN ENOUGH INFORMATION TO IDENTIFY THOSE WHOSE DETAILS YOU REQUIRE.

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83072

RESTRICTED

Richards O/R
Mcgrine O/R

01/0845LT/API

COL: CKD
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311/6/20/1

RESTRICTED

RESTRICTED 13 AUGUST 1982

FROM APIA

TO WELLINGTON 1157 -ROUTINE-

SECLAB
PMD
INTERNAL (MCLAY)
SFA (CON, SPA, LGL)

RESTRICTION ON ISSUING ENTRY VISAS (YOUR 22/1/127)

IN THE WEEK ENDING 13 AUGUST WE ISSUED 13 TEMPORARY PERMITS INCLUDING 1 BUSINESSMAN, 3 FOR MEDICAL TREATMENT, 6 FOR FUNERALS AND 2 GOVERNMENT OFFICIALS AND 1 ON YOUR INSTRUCTIONS.

2. THE WEEK HAS AGAIN BEEN A QUIET ONE WITH A SIMILAR NUMBER OF ENQUIRIES.

= 77298

RESTRICTED

31/6/2011

RESTRICTED 27 JULY 82
FROM LONDON
TO WELLINGTON 7369 ROUTINE

SECLAB
P/S MINISTER OF IMMIGRATION
INTERNAL (MCLAY)
JUSTICE (LOWE)
CROWN LAW
PMD
SFA (CON, SPA, LGL, AUS, EUR)

RESTRICTED

PRIVY COUNCIL DECISION RELATING TO ENTITLEMENT OF WESTERN SAMOANS TO N.Z. CITIZENSHIP: ACTION BY BRITISH POSTS.

YOUR 4892. FCO ARE SENDING (27/28 JULY) APPROPRIATE INSTRUCTIONS BY CABLE TO ALL POSTS WHICH HAVE IN PAST TWELVE MONTHS HANDLED NZ/SAMOAN VISA/PASSPORT ETC REQUESTS, AND BY SAVINGRAM TO ALL OTHER POSTS.

70677

RESTRICTED

Harold Richards

31/6/2011

API 619
OO WELLINGTON
GR 12Q
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UNCLAS 29 JULY 1982 URGENT
FROM APIA
TO WELLINGTON 1987 -I M M E D I A T E-

SFA(SPA,INF)

VISIT BY TVNZ TEAM

TWO-MAN TEAM FROM TVNZ ''CLOSE-UP'' PROGRAMME (MARTYN BATES AND KEITH SLATER) HAS ARRIVED HERE TO PREPARE PROGRAMME ON LOCAL REACTION TO PRIVY COUNCIL DECISION. (THEY ARE GETTING LITTLE CHANGE FROM WESTERN SAMOAN OFFICIALS).

2. TEAM HAS SOUGHT OUR PERMISSION TO SHOOT SOME FILM BOTH OUTSIDE AND INSIDE CHANCERY, WITH PARTICULAR EMPHASIS ON IMMIGRATION AREA. (WE HAVE SHOWN THEM THAT THIS IS IN FACT DESERTED EXCEPT FOR OUR OWN WORKMEN). THEY HAVE ALSO SOUGHT TO RECORD INTERVIEW WITH ACTING HIGH COMMISSIONER ON UNDERSTANDING THAT QUESTIONS OF FACT RATHER THAN POLICY WILL BE DISCUSSED (INTERVIEW CAN BE PRE-SCRIPTED IF WE REQUIRE). WE WOULD NORMALLY HAVE REJECTED BOTH REQUESTS OUT OF HAND (EXCEPT PERHAPS FOR OUTSIDE FILMING), BUT YOU MAY SEE SOME ADVANTAGES IN OUR BEING FAIRLY FORTHCOMING, PARTICULARLY AS OVERALL IMPACT WOULD HIGHLIGHT GENERAL RESTRAINT OF SAMOAN REACTION.

3. GRATEFUL YOUR URGENT INSTRUCTIONS.

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71886

CONFIDENTIAL 29 JULY 1982 CONFIDENTIAL 31/6/2011
FROM APIA
TO WELLINGTON 1988 -IMMEDIATE- URGENT

PMD
INTERNAL (MCLAY)
JUSTICE (LOWE)
CROWN LAW
SECLAB(BOND)
SFA(LGL,SPA,AUS)

WESTERN SAMOA : PRIVY COUNCIL DECISION

YOUR 1295. FOLLOWING, INVIEW OF URGENCY, ARE OUR PRELIMINARY RESPONSES. THERE ARE SOME POINTS WHERE WE WOULD LIKE TO CHECK FURTHER WITH SAMOAN OFFICIALS, AND WE SHALL REPORT FURTHER WHEN WE HAVE DONE SO.

2. EXIT PERMIT SYSTEM APPLIES AS WE UNDERSTAND IT TO ALL RESIDENTS - IN PRACTICE TO ALL WHO REMAIN IN WS LONGER THAN THREE MONTHS. IT IS PRIMARILY INTENDED TO ENSURE THAT NOBODY LEAVES OWING MONEY TO GOVERNMENT OR ITS AGENCIES AND PERMIT IS OBTAINED BY HAVING A

CARD INITIALLED BY A NUMBER OF DEPARTMENTS RIGHT DOWN TO THE PUBLIC LIBRARY. POLICE OFTEN (BUT NOT AS WE UNDERSTAND IT, AS MATTER OF ROUTINE) ADVISE IMMIGRATION DEPARTMENT OF PERSONS TO WHOM PERMITS SHOULD NOT BE ISSUED BECAUSE PROCEEDINGS ARE PENDING. WE ARE NOT AWARE OF ANY CASE IN WHICH EXIT PERMIT SCHEME HAS BEEN USED SPECIFICALLY TO PREVENT AN INDIVIDUAL'S LEAVING FOR ANY OTHER REASON THAN INDEBTEDNESS OR CRIMINAL PROCEEDINGS. WE SHALL BE CHECKING WITH ATTORNEY-GENERAL WHETHER GOVERNMENT HAS LEGAL POWER TO WITHHOLD PERMITS FOR OTHER REASONS AND WHETHER THERE IS ANY RIGHT OF APPEAL OR LEGAL CHALLENGE.

3. OUR IMPRESSION IS THAT SYSTEM IN GENERAL WORKS FAIRLY WELL, PARTICULARLY SINCE IMMIGRATION DEPARTMENT WAS TIGHTENED UP s6(a)
s6(a)

EXIT PERMITS ARE CLOSELY SCRUTINISED BY IMMIGRATION OFFICIALS AT FALEOLO. s6(a)
s6(a)

4. SAMOAN CITIZENSHIP PRACTICE. UNTIL WE CAN CONSULT ATTORNEY-GENERAL WE CAN OFFER VERY LITTLE COMMENT ON THIS POINT. s6(a)
s6(a)

THERE ARE A NUMBER OF WELL-KNOWN INDIVIDUALS INCLUDING SEVERAL MP'S WHO HOLD DUAL CITIZENSHIP AND WE ARE NOT AWARE OF ANY CASE IN WHICH ACTION HAS BEEN TAKEN AGAINST A DUAL NATIONAL.

71916 Mollis Richardson CONFIDENTIAL

CONFIDENTIAL

5. NUMBERS AFFECTED. WE HAVE BEEN IN CONTACT WITH SAMOAN OFFICIALS WHO ARE MAKING THEIR OWN ASSESSMENT OF NUMBERS AFFECTED. DETAILED RESULTS OF LAST YEAR'S CENSUS ARE NOT YET AVAILABLE AND IN ANY CASE BIRTH RECORDS APPEAR TO OFFER MORE RELIABLE BASIS FOR ESTIMATE (HENCE THE UPDATING EFFORT MENTIONED IN PARA 3 OUR 1981). WE SHALL MONITOR WORK BEING DONE ON THIS

s6(a)

IN THE MEANTIME IT MAY BE HELPFUL IF WE NOTE THAT ON THE BASIS OF 1976 CENSUS FIGURES IT WOULD SEEM ABOUT 31,000 RESIDENTS WERE AGED BETWEEN 27 AND 52 AT THE TIME (THIS WOULD NOT OF COURSE INCLUDE THOSE BORN IN RELEVANT PERIOD BUT ALREADY OVERSEAS). OBVIOUSLY IT WILL BE MUCH HARDER TO ESTIMATE NUMBER OF THEIR CHILDREN. ASSUMING AN AVERAGE NUMBER OF SIX CHILDREN PER COUPLE (WE SHALL TRY TO VALIDATE THIS FIGURE) THIS WOULD SUGGEST A TOTAL OF 93,000 CHILDREN (THOUGH SOME OF THESE WOULD OF COURSE THEMSELVES HAVE BEEN INCLUDED AMONGST THOSE BORN BETWEEN 1924 AND 1948 - AND ARE THEMSELVES STILL HAVING CHILDREN ELIGIBLE FOR CITIZENSHIP). THIS VERY IMPERFECT STATISTICAL TECHNIQUE WOULD SUGGEST A TOTAL OF THE ORDER OF 124,000 ELIGIBLE FOR NZ CITIZENSHIP. A BETTER ESTIMATE OF THE CHILDREN MIGHT BE POSSIBLE BY USING CRUDE BIRTH RATES AND INFANT MORTALITY RATES. THE STATISTICS OF THIS HOWEVER ARE RATHER BEYOND US, AND IN ANY CASE YOU (EIB?) WOULD PROBABLY HAVE MORE RELIABLE BASIC DATA.

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CONFIDENTIAL

CONFIDENTIAL 30 JULY 1982

31/6/2011

FROM APIA

TO WELLINGTON 1093 -PRIORITY- CONFIDENTIAL

PMD

INTERNAL (MCLAY)

JUSTICE (LOWE)

CROWN LAW

SECLAB (BOND)

SFA (LGL.SPA.AUS)

URGENT

WESTERN SAMOA : PRIVY COUNCIL DECISION

FOLLOWING SUPPLEMENTS INFORMATION GIVEN IN OUR 1088 (IN REPLY TO YOUR 1295)

2. EXIT PERMITS (U/L). ATTORNEY-GENERAL (SLADE) HAS CONFIRMED INFORMATION IN OUR 1088 PARAS 2 AND 3 (EXCEPT LAST SENTENCE PARA 3 - A POINT WE DID NOT RAISE). IN PARTICULAR SLADE CONFIRMED THAT HE KNEW OF NO CASE WHERE PERMIT HAD BEEN WITHHELD OTHER THAN FOR DEBT, CRIMINAL PROCEEDINGS, OR HEALTH REASONS.

s6(a)

s6(a)

LEGAL BASIS FOR SCHEME IS 1978 PERMITS AND PASSPORTS ACT, WHICH SUPERSEDED A 1961 ORDINANCE. 1978 ACT IS NOT IN AID-FINANCED WESTERN SAMOAN STATUTES REPRINT, AND WE ARE SENDING YOU A COPY BY TODAY'S A/F BAG. ACT DOES NOT - AS FAR AS WE CAN SEE - SPECIFY GROUNDS ONWHICH PERMITS ARE TO BE GIVEN OR WITHHELD. SLADE BELIEVES THAT GOVERNMENT WOULD NEED TO SHOW ''GOOD CAUSE'' IN ANY CASE WHERE PERMIT WAS WITHHELD. HE DOES NOT BELIEVE THAT EXIT PERMITS SCHEME WOULD BE WORKABLE MEANS OF CONTROLLING MOVEMENT OF TRAVELLERS. THERE IS A RIGHT OF APPEAL TO THE COURTS WHEN PERMITS ARE WITHHELD, AND QUESTIONS OF CONSTITUTIONAL RIGHT TO FREEDOM OF TRAVEL ARE INVOLVED.

3. SAMOAN CITIZENSHIP PRACTICE (U/L). AGAIN SLADE CONFIRMED VIEWS SET OUT IN PARA 4 OUR 1088. (PLEASE NOTE WORD ''EXPLORED'' IN LINE 4 SHOULD READ ''ENFORCED''). HE COMMENTED THAT 1972 ACT GIVES MINISTER DISCRETION (U/L) TO DEPRIVE INDIVIDUALS OF WESTERN SAMOAN CITIZENSHIP, BUT HE KNEW OF NO CASE WHERE THIS HAD BEEN DONE. AS REGARDS THE s6(a)

s6(a) PROVISIONS OF 1959 CITIZENSHIP ORDINANCE SLADE COULD NOT HELP US. CHIEF IMMIGRATION OFFICER, HOWEVER, BELIEVES THERE WERE CASES BETWEEN 1962 AND 1971 IN WHICH PEOPLE WERE DEPRIVED OF THEIR WESTERN SAMOAN PASSPORTS UNDER THIS ORDINANCE BUT NOT (U/L) OF THEIR WESTERN SAMOAN CITIZENSHIP. s6(a)

s6(a) HE SAID THAT HIS DEPARTMENT HOLDS NO REGISTER OF CANCELLED WESTERN SAMOAN CITIZENSHIPS.

- 72310 Mellis Richards Lattle

CONFIDENTIAL

4. NUMBERS AFFECTED (U/L). WE HAVE NOT BEEN ABLE TO CONTACT RELEVANT OFFICIALS SO FAR TODAY AND ARE NO FURTHER AHEAD IN THIS AREA. WE SHALL REPORT SEPARATELY. s6(a)
s6(a)

5. FOOTNOTE. ON CHECKING ABOVE TEXT WE REALISE WE SHOULD ADD THAT THOSE AGED UNDER 18 ARE EXEMPT FROM EXIT PERMIT SCHEME.
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30/1245LT/API

COL: CKD
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UNCLASS 3 AUG 82

FROM LONDON

TO WELLINGTON 7636 -IMMEDIATE- (TO BE ON ACTION OFFICERS' DESKS BY 0830)

URGENT

3116/20 11

SFA (LGL, SPA, CON, AUS)
PMD
CROWN LAW (NEAZOR)
SECLAB (BOND)
JUSTICE (LOWE)
INTERNAL (MCLAY)

PRIVY COUNCIL APPEAL: LESA V. ATTORNEY-GENERAL.

WE HAVE JUST BEEN ADVISED BY ALLEN AND OVERY THAT ORDER-IN-COUNCIL WAS MADE ON FRIDAY 30 JULY. PROCEDURE NOW TO BE FOLLOWED IS FOR SEALED PRINT OF THE ORDER TO BE DELIVERED TO AGENTS FOR THE RESPONDENT FOR LODGEMENT IN THE COURT OF APPEAL IN NEW ZEALAND. AT THE SAME TIME A COPY WILL BE DELIVERED TO OUR AGENTS.

2. FOLLOWING MEANWHILE IS TEXT OF DRAFT ORDER:
BEGINS:

AT THE COURT AT BUCKINGHAM PALACE
THE 30TH DAY OF JULY 1982

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

WHEREAS THERE WAS THIS DAY READ AT THE BOARD A REPORT FROM THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DATED THE 28TH DAY OF JULY 1982 IN THE WORDS FOLLOWING VIZ.:-

"WHEREAS BY VIRTUE OF HIS LATE MAJESTY KING EDWARD THE SEVENTH'S ORDER IN COUNCIL OF THE 18TH DAY OF OCTOBER 1909 THERE WAS REFERRED UNTO THIS COMMITTEE THE MATTER OF AN APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND BETWEEN FALEMA'L LESA APPELLANT AND ATTORNEY-GENERAL RESPONDENT (PRIVY COUNCIL APPEAL NO.43 OF 1981) AND LIKEWISE THE HUMBLE PETITION OF THE APPELLANT SETTING FORTH THAT BY ORIGINATING SUMMONS IN THE HIGH COURT THE APPELLANT SOUGHT A DECLARATORY ORDER

73109

Hastie
Morris
Richards

AS AGAINST THE RESPONDENT DETERMINING THE QUESTION WHETHER ON THE TRUE CONSTRUCTION OF THE BRITISH NATIONALITY AND STATUS OF ALIENS (IN NEW ZEALAND) ACT 1928 THE APPELLANT ON HER BIRTH IN WESTERN SAMOA ON 28TH NOVEMBER 1946 BECAME A NATURAL BORN BRITISH SUBJECT: THAT ON 12TH NOVEMBER 1980 BY ORDER OF THE HIGH COURT THE ORIGINATING SUMMONS WAS REMOVED INTO THE COURT OF APPEAL FOR HEARING AND DETERMINATION: THAT IN ITS JUDGMENT DATED 15TH APRIL 1981 THE COURT OF APPEAL ANSWERED THE QUESTION IN THE ORIGINATING SUMMONS IN THE NEGATIVE AND MADE NO ORDER AS TO COSTS: THAT ON 31ST AUGUST 1981 BY ORDER OF THE COURT OF APPEAL THE APPELLANT WAS GRANTED LEAVE TO APPEAL TO YOUR MAJESTY IN COUNCIL: AND HUMBLY PRAYING YOUR MAJESTY IN COUNCIL TO TAKE THIS APPEAL INTO CONSIDERATION AND THAT THE JUDGMENT OF THE COURT OF APPEAL DATED 15TH APRIL 1981 MAY BE REVERSED ALTERED OR VARIED AND FOR FURTHER OTHER RELIEF:

''THE LORDS OF THE COMMITTEE IN OBEDIENCE TO HIS LATE MAJESTY'S SAID ORDER IN COUNCIL HAVE TAKEN THE APPEAL AND HUMBLE PETITION INTO CONSIDERATION AND HAVING HEARD COUNSEL ON BEHALF OF THE PARTIES ON BOTH SIDES THEIR LORDSHIPS DO THIS DAY AGREE HUMBLY TO REPORT TO YOUR MAJESTY AS THEIR OPINION THAT THIS APPEAL OUGHT TO BE ALLOWED AND THE QUESTION IN THE ORIGINATING SUMMONS ANSWERED IN THE AFFIRMATIVE:

''AND IN CASE YOUR MAJESTY SHOULD BE PLEASED TO APPROVE OF THIS REPORT THEN THEIR LORDSHIPS DO DIRECT THAT THERE BE PAID BY THE RESPONDENT TO THE APPELLANT HER COSTS OF THIS APPEAL INCURRED IN THE SAID COURT OF APPEAL AND THE SUM OF PNDS..... FOR HER COSTS THEREOF INCURRED IN ENGLAND.''

HER MAJESTY HAVING TAKEN THE SAID REPORT INTO CONSIDERATION WAS PLEASED BY AND WITH THE ADVICE OF HER PRIVY COUNCIL TO APPROVE THEREOF AND TO ORDER AS IT IS HEREBY ORDERED THAT THE SAME BE PUNCTUALLY OBSERVED OBEYED AND CARRIED INTO EXECUTION.

WHEREOF THE GOVERNOR-GENERAL OR OFFICER ADMINISTERING THE GOVERNMENT OF NEW ZEALAND AND ITS DEPENDENCIES FOR THE TIME BEING AND ALL OTHER PERSONS WHOM IT MAY CONCERN ARE TO TAKE NOTICE AND GOVERN THEMSELVES ACCORDINGLY.

N.E.LEIGH

ENDS:

3. THE SUM FOR APPELLANT'S COSTS, YOU WILL NOTICE, HAS BEEN LEFT BLANK. AS READ OF ALLEN AND OVERY HAS APPARENTLY DISCUSSED WITH SQUIRE, QUESTION OF COSTS SHOULD IF POSSIBLE BE AGREED BETWEEN THE PARTIES.

31/6/2011

CONFIDENTIAL 04 AUGUST 1982
FROM APIA
TO WELLINGTON 1126 -PRIORITY-

SFA
PMD
SECLAB(BOND)
INTERNAL(MCLAY)
JUSTICE(LOWE)
CROWN LAW
SFA(LGL,SPA,CON,AUS)

CONFIDENTIAL

URGENT

PRIVY COUNCIL DECISION RELATING TO ENTITLEMENT OF WESTERN SAMOANS TO NEW ZEALAND CITIZENSHIP

YOUR 1235

2. WE HAVE CONFIRMED THAT REQUIREMENT TO SWEAR ON OATH OF ALLEGIANCE IN ORDER TO OBTAIN A PASSPORT NO LONGER EXISTS HAVING BEEN REPEALED BY SECTION 15 OF THE PERMITS AND PASSPORTS ACT 1978.

AS TO YOUR SECOND QUESTION, SITUATION IS NOT ENTIRELY CLEAR. OATH REQUIREMENT WAS INSISTED ON FOR SOME YEARS FOLLOWING ADOPTION OF 1961 ORDINANCE BUT WAS SUBSEQUENTLY DROPPED.

s6(a)

WE ARE SORRY BUT WE DOUBT WHETHER WE CAN OBTAIN ANYTHING MORE SPECIFIC.

=

CONFIDENTIAL

73875

04/1630LT/API

COL: 1978 1961
+++

6/8

3116/201

RESTRICTED 06 AUGUST 1982
FROM APIA
TO WELLINGTON 1121 -ROUTINE-

RESTRICTED

SECLAB
PMD
INTERNAL(MCLAY)
SFA(CON,SPA,LGL)

RESTRICTION ON ISSUING ENTRY VISAS (YOUR 22/1/127)

IN THE WEEK ENDING 6 AUGUST WE ISSUED 16 TEMPORARY PERMITS. s6(a)
6 PERMITS TO GOVERNMENT OFFICIALS s6(a)
s6(a) : 2 FOR A WEDDING FOLLOWING SECLAB APPROVAL:
2 FOR MEDICAL TREATMENT: 2 BUSINESSMEN AND 4 FOR FUNERALS.

2. AGAIN A QUIET WEEK WITH ABOUT 40 ENQUIRIES. THE MAJORITY OF PEOPLE SEEM TO HAVE BEEN INFORMED BY THEIR TRAVEL AGENTS OR FOUND OUT FROM THE MEDIA ABOUT THE RESTRICTIONS AND HAVE ACCEPTED THE DECISION s6(a)

3. APART FROM A FEW INDIVIDUAL CASES ONLY AREA CAUSING REAL CONCERN TO PEOPLE IS FUNERALS WHERE WE ARE ONLY ISSUING PERMITS TO A MINIMAL NUMBER OF PEOPLE.

=

RESTRICTED

74628

Morris
Richards

311/6/20/1
File

UNCLAS 13 AUGUST 1982
FROM APIA
TO WELLINGTON 1158 -ROUTINE-

INTERNAL
SFA(CON)

PASSPORTS

YOUR 1264. CONFIRM ALL FIRST TIME PASSPORT APPLICATIONS OR ADDITION INTO PASSPORT OF PERSONS BORN IN WESTERN SAMOA ARE BEING REFERRED TO YOU.

2. ONLY SIX APPLICATIONS RECEIVED SO FAR AS RESULT PRIVY COUNCIL DECISION AND THESE ARE SUBJECT OF OUR MEMORANDUM 69/3/2 OF 6 AUGUST BEING SENT BY A/F BAG LEAVING 13 AUGUST.

=

77299

Mr. J.D.L. Richards. SPP Rev.

Mr Burns
Mrs

Copy for you
[illegible] 17/8

File

311/6/201.

CONFIDENTIAL

CONFIDENTIAL 16 AUGUST 1982
FROM [redacted]A
TO WELLINGTON 1162 -I M M E D I A T E-

URGENT

PMD
P/S MINISTER OF JUSTICE
P/S MFA
JUSTICE
INTERNAL
LABOUR
SOLICITOR-GENERAL
SFA(LGL,SPA,AUS)

WESTERN SAMOA : PRIVY COUNCIL DECISION

YOUR 1292 AND 1293

2. WE PASSED COPIES OF PROTOCOL DRAFT (ONE FOR HIM, ONE FOR VA'AI) TO IULAI TOMA IMMEDIATELY ON HIS RETURN LAST NIGHT AND RAN THROUGH WITH HIM THE POINTS OF EXPLANATION AND AMPLIFICATION YOU MADE. HE OFFERED NO SUBSTANTIVE COMMENT BUT EXPRESSED HIS GRATITUDE THAT WE HAD BEEN ABLE SO SPEEDILY TO LET HIM HAVE THE DRAFT TEXT. s6(a)

s6(a) IT WAS HIS HOPE THAT IT WOULD BE POSSIBLE TO SECURE A DECISION ON THE DRAFT TODAY, OR TOMORROW AT THE LATEST. SOME DISCUSSION SEEMS TO HAVE TAKEN PLACE ON IT LAST NIGHT AND WE HAVE JUST LEARNT THAT VA'AI IS AT PRESENT MEETING WITH THE HEAD OF STATE AND WILL BE HAVING DISCUSSIONS WITH TUPUOLA LATER THIS MORNING.

= 77304

CONFIDENTIAL

16/0920LT/API

COL: 1292 1293

+++

CONFIDENTIAL 17 AUGUST 1982

FROM APIA

311/6/20/1

TO WELLINGTON 1174 -IMMEDIATE-

PMD

P[redacted] MINISTER OF JUSTICE

P/S MFA

JUSTICE

INTERNAL

SECLAB

SOLICITOR-GENERAL

SFA(LGL,SPA,AUS)

CONFIDENTIAL

URGENT

Richards
Morris

WESTERN SAMOA : PRIVY COUNCIL DECISION

YOUR 1292 AND 1293

2. THE SECRETARY TO GOVERNMENT (IULAI TOMA) HAS TOLD US THAT, LATE LAST NIGHT, CABINET ACCEPTED THE PROTOCOL APPROACH AND AGREED TO THE NEW ZEALAND DRAFT. A LETTER FROM VA'AI KOLONE TO THIS EFFECT HAS BEEN TELEXED TO THE WESTERN SAMOAN HIGH COMMISSIONER IN WELLINGTON FOR PASSING TO MR MULDOON.

3. DISCUSSION WAS LENGTHY WITH THE MEETING LASTING SOME TWELVE HOURS. s6(a)

s6(a)

WITH THE

DEPUTY PRIME MINISTER, WHO CHAIRED THE MEETING. s6(a)

s6(a)

s6(a)

THE HEAD OF

STATE (WHO IS ALSO ILL) HAS BEEN INFORMED OF THE CABINETS' DECISION BY THE DEPUTY HEAD OF STATE WITH WHOM TOMA HAS KEPT IN FREQUENT CONTACT. s6(a)

s6(a)

4. MINISTERS, TOMA SAID, HAD RAISED ''ALL SORTS OF QUESTIONS''.

s6(a)

MANY WERE ABOUT MATTERS OF A LEGAL AND TECHNICAL SORT s6(a)

s6(a) AND THEY WERE, IN ANY EVENT, OF A NATURE THAT MIGHT MORE APPROPRIATELY BE ANSWERED BY THE NEW ZEALAND SIDE.

s6(a) WONDERED WHETHER MR MCLAY MIGHT BE PREPARED TO MEET SAMOAN MINISTERS FACE-TO-FACE AND DISCUSS THESE ISSUES WITH THEM. HE EMPHASISED THAT THERE WAS NO SUGGESTION SUCH AN EXCHANGE SHOULD IN ANY WAY BE SEEN AS INDICATING OR IMPLYING SECOND THOUGHTS ABOUT EITHER THE PRINCIPLE OR THE SUBSTANCE OF THE PROTOCOL. BUT SUCH CONCERNS AS STILL EXISTED AMONG SAMOAN MINISTERS WOULD, s6(a)

BEST BE ALLEVIATED BY DISCUSSION AT MINISTER-TO-MINISTER LEVEL.

s6(a)

5. AS FOR THE QUESTION OF TIMING OF THE SIGNATURE OF THE PROTOCOL, s6(a)
THIS SHOULD BE AS SOON AS PRACTICABLE.
s6(a)

s6(a) WE, FOR OUR PART, WOULD SHARE HIS VIEW THAT THE
AGREEMENT SHOULD BE WRAPPED UP AS SOON AS POSSIBLE. s6(a)
s6(a)

s6(a)

s6(a) WE SHOULD BE GRATEFUL THEREFORE IF YOU WOULD CONSIDER THE
COORDINATION OF ANY PUBLIC ANNOUNCEMENT. s6(a)
s6(a)
s6(a)

A
SIMULTANEOUS RELEASE IS PROBABLY THE ANSWER, BUT DATELINES WOULD
NEED TO BE WATCHED AS CLOSELY AS DEADLINES.
=

CONFIDENTIAL 18 AUGUST 1982
FROM WELLINGTON
TO APIA 1329 IMMEDIATE

31/6/201

CONFIDENTIAL

PMD
P/S ATTORNEY-GENERAL
SFA SPA LGL)

URGENT

FOR HIGH COMMISSIONER FROM HENSLEY

WESTERN SAMOA : CITIZENSHIP

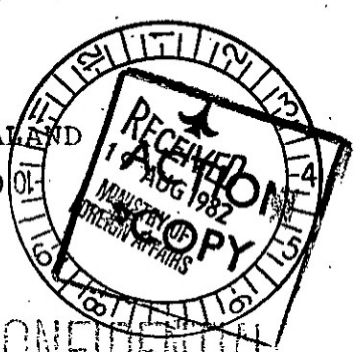
AGREEMENT HAS BEEN REACHED WITH THE SAMOANS FOR A SIMULTANEOUS ANNOUNCEMENT TO BE MADE IN APIA AND WELLINGTON AT 12.30PM THURSDAY 19 AUGUST NEW ZEALAND TIME. THE ANNOUNCEMENT WILL BE CO-ORDINATED BUT NOT IDENTICAL.

AT THE SAMOANS' REQUEST WE HAVE PREPARED A DRAFT OF THE NEW ZEALAND STATEMENT. THE SAMOAN HIGH COMMISSIONER IS TELEXING THIS TO IULAI/TOMA AND IS SEEKING ANY COMMENTS OR SUGGESTIONS FOR CHANGE BEFORE OUR CAUCUS MEETS 10.00 AM 19 AUGUST. FOR YOUR INFORMATION I AM SETTING OUT BELOW THE TEXT OF THIS DRAFT, AND YOU MAY WISH TO CHECK WITH IULAI. THE PRIME MINISTER IS HAPPY WITH THE WORDING, BUT IT WILL OF COURSE AVE HAVE TO BE CLEARED BY CAUCUS TOMORROW.

BEGINS
AGREEMENT HAS BEEN REACHED BETWEEN WESTERN SAMOA AND NEW ZEALAND ON ARRANGEMENTS TO HANDLE CITIZENSHIP QUESTIONS FOLLOWING THE RECENT PRIVY COUNCIL DECISION. THE PRIME MINISTEROF WESTERN SAMOA AND I ARE ANNOUNCING THIS SIMULTANEOUSLY.

THE AGREEMENT WILL BE SET OUT IN A PROTOCOL WHICH WILL FORM PART OF THE 1962 TREATY OF FRIENDSHIP.

IT WILL BE BASED ON THE FACT THAT A COUNTRY NORMALLY GRANTS CITIZENSHIP ONLY TO THOSE INDIVIDUALS WHO HAVE A CLOSE AND EFFECTIVE LINK WITH IT. AT THE SAME TIME, HOWEVER, IT RECOGNISES THAT THE SPECIAL RELATIONSHIP BETWEEN NEW ZEALAND AND WESTERN SAMOA GIVES THOSE CITIZENS OF WESTERN SAMOA WHO COME TO NEW ZEALAND TO LIVE A SPECIAL POSITION UNDER NEW ZEALAND LAW GOVERNING CITIZENSHIP.



THE AGREEMENT WILL PROVIDE THAT:

CONFIDENTIAL

CONFIDENTIAL

- ALL WESTERN SAMOANS RESIDENT IN NEW ZEALAND WHEN THE PROTOCOL COMES INTO FORCE WILL HAVE THE RIGHT TO NEW ZEALAND CITIZENSHIP IMMEDIATELY:

- ALL WESTERN SAMOANS WHO THEREAFTER ARE GRANTED PERMANENT RESIDENCE UNDER NEW ZEALAND'S NORMAL IMMIGRATION PROCEDURES WILL ALSO HAVE THE RIGHT TO NEW ZEALAND CITIZENSHIP IMMEDIATELY:

- AT THE REQUEST OF EITHER, THE TWO GOVERNMENTS WILL CONSULT IN FUTURE ON ANY ISSUE AFFECTING THE WORKING OF THEIR LAWS ON CITIZENSHIP AND IMMIGRATION.

THE WESTERNSAMOAN GOVERNMENT HAS INVITED THE MINISTER OF JUSTICE AND ATTORNEY-GENERAL, HON. J K MCLAY, TO TRAVEL TO APIA SHORTLY TO COMPLETE AND SIGN THE PROTOCOL.

LEGISLATION WILL BE REQUIRED IN THE NEW ZEALAND PARLIAMENT AND WILL BE INTRODUCED AS SOON AS POSSIBLE AFTER THE PROTOCOL IS SIGNED.

I WANT TO THANK THE HON. VA'AI KALONE, PRIME MINISTER OF WESTERN SAMOA, AND HIS GOVERNMENT. THEIR READINESS TO CONSULT WITH US HAS ENABLED OUR TWO COUNTRIES TO REACH THIS OUTCOME.

CONFIDENTIAL

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K78060
WLN 18/0750Z PT

UNCLAS 18 AUGUST 1982
FROM APIA
TO WELLINGTON 1183 -P R I O R I T Y-

URGENT

PMD
P/S ATTORNEY-GENERAL
SFA(SPA,LGL)

WESTERN SAMOA : CITIZENSHIP

FOLLOWING IS TEXT OF PRESS RELEASE ISSUED BY PRIME MINISTER'S DEPARTMENT TODAY.

...QUOTE

AGREEMENT HAS BEEN REACHED BETWEEN THE SAMOAN AND NEW ZEALAND GOVERNMENTS ON THE CITIZENSHIP ISSUE WHICH AROSE FROM THE RECENT PRIVY COUNCIL DECISION ON NEW ZEALAND CITIZENSHIP. THE PRIME MINISTER, HON. VA'AI KOLONE SAID TODAY THAT THIS AGREEMENT, WHICH WILL BE FORMALISED IN A PROTOCOL WILL BE BASED ON THE FACT THAT A COUNTRY NORMALLY GRANTS CITIZENSHIP TO THOSE INDIVIDUALS WHO HAVE A CLOSE AND EFFECTIVE LINK WITH IT. AT THE SAME TIME, HOWEVER, IT RECOGNISES THAT THE SPECIAL RELATIONSHIP BETWEEN NEW ZEALAND AND WESTERN SAMOA GIVES THOSE CITIZENS OF WESTERN SAMOA WHO COME TO NEW ZEALAND TO LIVE A SPECIAL POSITION UNDER NEW ZEALAND LAW GOVERNING CITIZENSHIP.

THE AGREEMENT WILL PROVIDE THAT :

- ALL WESTERN SAMOANS LIVING IN NEW ZEALAND WHEN PROTOCOL COMES INGO FORCE WILL HAVE THE RIGHT TO NEW ZEALAND CITIZENSHIP IMMEDIATELY,
- ALL WESTERN SAMOANS WHO THEREAFTER ARE GRANTED PERMANENT RESIDENCE UNDER NEW ZEALAND'S NORMAL IMMIGRATION PROCEDURES WILL ALSO HAVE THE RIGHT TO NEW ZEALAND CITIZENSHIP IMMEDIATELY.

...UNQUOTE

= 78479

Richards

18/1550LT/API

COL: CKD
+++

31/6/2007.

CONFIDENTIAL 21 AUGUST 1982
FROM A[redacted]A
TO WELLINGTON 1194 - I M M E D I A T E -

PMD
MFA
JUSTICE
EDUCATION
LABOUR
SOLICITOR-GENERAL
INTERNAL
SFA(SPA,LGL)

CONFIDENTIAL URGENT

FROM MCLAY TO PRIME MINISTER

WESTERN SAMOA : CITIZENSHIP

OUR 1193

2. THE DEPUTY PRIME MINISTER s6(a)
AND I SIGNED THE PROTOCOL THIS MORNING IN A CEREMONY
WITNESSED BY THE SAMOAN CABINET. THE PRESS WERE ALSO PRESENT.
s6(a)

s6(a)

I WILL REPORT IN MORE
DETAIL ON MY RETURN.

4. SUBJECT TO ANY DELAYS IN MY RETURN FLIGHT TO NEW ZEALAND
I EXPECT TO ARRIVE IN WELLINGTON AT 2120 ON MONDAY 23 AUGUST.

79325

CONFIDENTIAL

21/1130LT/API

COL:

Look Richard, Bonnie

RESTRICTED 23 AUGUST 1982 URGENT RESTRICTED

FROM [redacted]IA

TO WELLINGTON 1200 -I M M E D I A T E-

PMD

SFA(SPA,LGL)

CITIZENSHIP : POSSIBLE VISIT BY TUPUOLA

YOUR 1333

2. TUPUOLA HAD INDICATED HIS INTENTION OF VISITING NZ TO TALK TO MR MULDOON IMMEDIATELY FOLLOWING SIGNATURE OF PROTOCOL AND HAD GONE SO FAR AS TO RAISE WITH US QUESTION OF ENTRY PERMIT FOR TRAVEL YESTERDAY. A FEW HOURS LATER, HOWEVER, HE CHANGED HIS MIND s6(a)
AND DECIDED NOT TO GO. WE UNDERSTAND - FROM NZ MEDIA REPRESENTATIVES - THAT HE IS NOW TALKING IN VERY GENERAL TERMS OF THE POSSIBILITY OF A VISIT IN A FORTNIGHT OR SO'S TIME WHEN HE HAS HAD THE OPPORTUNITY TO GUAGE PUBLIC REACTION. WE SHALL TRY TO KEEP TRACK OF HIS THINKING s6(a)
AND WILL, OF COURSE, LET YOU KNOW AS SOON AS ANYTHING DEFINITE EMERGES.

3. SINCE ABOVE WAS DRAFTED YOUR 1335 HAS BEEN RECEIVED. s6(a)
s6(a) HE HAS
NOT YET APPROACHED US FOR ENTRY PERMIT.

4. ABOVE HELD UP BY COMMUNICATIONS DIFFICULTIES. WE CAN NOW CONFIRM THAT TUPUOLA DID NOT RPT NOT LEAVE ON POLYNESIAN FLIGHT OUR TUESDAY 24TH.

= RESTRICTED

80154

24/0915LT/API

COL: 133

Richards

Lowe

Meadows

RESTRICTED

31/6/2011

RESTRICTED 31 AUGUST 1982

URGENT

FROM APIA

TO WELLINGTON 1219 -P R I O R I T Y-

RPTD LONDON (FOR PRIME MINISTER'S PARTY, ATTENTION : GROSER) 98

-P R I O R I T Y-

PMD

JUSTICE

SFA(SPA,LGL)

WESTERN SAMOA : CITIZENSHIP

REACTION TO SIGNATURE OF PROTOCOL

AS KNOWLEDGE OF THE PROVISIONS OF THE PROTOCOL AND THE CIRCUMSTANCES, s6(a) OF THE DISCUSSIONS LEADING TO ITS SIGNATURE HAVE BECOME MORE WIDELY KNOWN, THERE HAS BEEN A MARKED UPSURGE OF PUBLIC CRITICISM. MOST OF IT HAS BEEN FROM EXPECTED QUARTERS - TUPUOLA, THE PRESS, SOME OF THE LEGAL FRATERNITY - ALTHOUGH THERE IS EVIDENCE OF SOME DISSENSION WITHIN THE GOVERNMENT PARTY'S OWN RANKS. MOST OF IT TOO HAS BEEN DIRECTED AT THE WESTERN SAMOAN GOVERNMENT RATHER THAN NEW ZEALAND. THE PRINCIPAL LINES OF ATTACK ARE THAT THE GOVERNMENT HAS GIVEN AWAY A ''BASIC HUMAN RIGHT'' OF 100,000 WESTERN SAMOANS, THAT IT ENTERED TOO HASTILY INTO THE AGREEMENT WITHOUT ADEQUATE CONSULTATION NATIONALLY AND THAT IT SHOULD HAVE NOT ALLOWED ITSELF TO BE ASSOCIATED WITH THE SOLUTION OF A PROBLEM WHICH WAS ESSENTIALLY NEW ZEALAND'S.

2. TUPUOLA'S LETTERS TO MR MCLAY AND MR LANGE HAVE BEEN PUBLISHED AS HAVE THE REPLIES. THE LAW SOCIETY, PROMPTED BY TWO LEADING LAWYERS, BOTH OF THEM SUPPORTERS OF TUPUOLA, CONTINUES TO CLAIM THAT THE PROTOCOL, OR MORE PRECISELY THE WSG'S ACTION IN AGREEING TO IT, IS IN VIOLATION OF ARTICLE 15.2 OF THE CONSTITUTION, THE HUMAN RIGHTS PROVISION, IN THAT IT IS AN EXECUTIVE ACT WHICH DISCRIMINATES BETWEEN DIFFERENT GROUPS OF WESTERN SAMOANS. TWO CIVIL RIGHTS GROUPS, TAGI-I-LIMA (LITERALLY ''SWEAT OF THE HANDS'') AND SPEAK OUT SAMOA, BOTH FOUNDED SOME MONTHS AGO TO PROMOTE A WIDENING OF THE FRANCHISE AND ENHANCED RESPECT FOR INDIVIDUAL RIGHTS GENERALLY IN WESTERN SAMOA HAVE CALLED A PUBLIC RALLY TO BE HELD LATER TODAY TO DEBATE THE ISSUE. AS FOR THE CRITICSM OF NEW ZEALAND THIS HAS BEEN ALONG PREDICTABLE LINES WITH ACUSATIONS OF RACISM, REFERENCES TO PAST HARRASSMENT OF OVERSTAYERS AND CHARGES THAT THE WSG WAS PRESSURED INTO THE AGREEMENT BY MEANS UNSPECIFIED BUT GENERALLY HELD TO BE UNFAIR IF NOT IMPROPER.

82165

RESTRICTED

RESTRICTED

3. s6(a) IT IS DIFFICULT TO ASSESS THE DEPTH AND REAL SIGNIFICANCE OF THE CURRENT PROTEST. IT APPEARS TO BE VERY MUCH CENTRED ON APIA AND IS BEING STRONGLY BACKED BY TUPUOLA AND HIS SUPPORTERS. s6(a)
s6(a)

s6(a) IT HAS ALSO CREATED DISSATISFACTION WITHIN THE GOVERNMENT CAUCUS WHERE, IT IS RUMOURED, AN ATTEMPT WAS MADE TO PASS A VOTE OF NO-CONFIDENCE IN VA'AI. WHILE WE BELIEVE THIS RUMOUR TO BE ILL-FOUNDED, THE CAUCUS SECRETARY, TUILAEPA SAILELE MP, FORMER DEPUTY SECRETARY TO THE TREASURY, HAS COME OUT PUBLICLY AGAINST THE PROTOCOL IN VERY STRONG TERMS AND IS REPORTED TO HAVE RESIGNED HIS POSITION. BY CONTRAST WE HAVE BEEN TOLD BY BOTH GOVERNMENT AND NON-GOVERNMENT SOURCES THAT AT VILLAGE LEVEL THE ARRANGEMENTS MADE UNDER THE PROTOCOL HAVE BEEN WELL RECEIVED, SINCE THEY ENSURE THAT THE REMITTANCES WILL KEEP FLOWING AND OVERSTAYERS AND THEIR FAMILIES WILL BE ABLE TO GET TOGETHER AGAIN EITHER HERE OR IN NEW ZEALAND.

4. THE PRIME MINISTER IS REACTING VERY COOLLY TO THE CRITICISM THAT HAS ARISEN. IT HAS, WE HAVE BEEN TOLD, COME AS NO SURPRISE TO HIM AND HE IS NOT ALARMED BY IT. HE HAS SO FAR MADE NO PUBLIC COMMENT s6(a)
s6(a)

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RESTRICTED

31/1130LT/API

COL: CKD

RESTRICTED 31 AUGUST 1982

311/6/201,

FROM APIA

TO WELLINGTON 1225 -PRIORITY-

RPTD. LONDON(FOR PRIME MINISTER'S PARTY, ATTENTION GROSER) 99

[redacted]IORITY-

RESTRICTED

PMD

JUSTICE

SFA(SPA, LGL)

URGENT

WESTERN SAMOA: CITIZENSHIP

OUR 1219, PARAGRAPH 2. YESTERDAY'S PUBLIC MEETING WAS s6(a)
s6(a) HIGHEST ESTIMATE OF ATTENDANCE WE HAVE HEARD IS 1,000 . AND WE SUSPECT TRUE FIGURE WAS CONSIDERABLY LESS, PERHAPS NO MORE THAN HALF THIS NUMBER. IN VIEW OF EXTENSIVE PRESS AND RADIO ADVERTISING(AND , WE GATHER, FREE TRANSPORT FROM VILLAGES) THIS WILL BE s6(a)
MEETING LASTED ONLY ABOUT 45 MINUTES.

2.s6(a)
s6(a) TUPUOLA SPOKE AT SOME LENGTH s6(a)
s6(a) HE AGAIN ACCUSED VA'AI'S GOVERNMENT OF SIGNING AWAY THE HUMAN RIGHTS OF 100,000 SAMOANS WITHOUT CONSULTING THEM, AND CALLED ON THE MEETING TO SHOW THAT THE MAJORITY OF SAMOANS DID NOT SUPPORT THE GOVERNMENT'S DECISION. (A PETITION WAS CIRCULATED FOR SIGNATURE s6(a) CALLING ON THE GOVERNMENT TO RECONSIDER AND NOT TO RATIFY THE PROTOCOL). HE REFERRED TO POSSIBILITY OF TAKING ISSUE TO U.N. OR TO INTERNATIONAL COURT.

3. ONLY OTHER SPEAKER WAS AEAN SEMI EPATI, PRESIDENT OF LAW SOCIETY, WHO SPOKE BRIEFLY ABOUT LOSS OF HUMAN RIGHTS.

4.s6(b)
s6(b) WE UNDERSTAND VA'AI WILL EXPLAIN GOVERNMENT'S DECISION IN A RADIO TALK LATER THIS WEEK, s6(b)
s6(b) THERE IS, HOWEVER, STILL SOME LINGERING ANXIETY, ON THE BASIS OF NEW ZEALAND MEDIA REPORTS, THAT THERE COULD STILL BE HITCHES AT YOUR END. WE HAVE SOUGHT, WE HOPE CORRECTLY.TO PROVIDE REASSURANCE ON THIS POINT.

Richard
Lowe
Thorpe

RESTRICTED

31/6/2011

RESTRICTED 07 SEPTEMBER 1982
FROM APIA
TO WELLINGTON 1259 -I M M E D I A T E-
RPTD. OTTAWA 03 - I M M E D I A T E-

RESTRICTED

P/S MINISTER OF JUSTICE
JUSTICE(LOWE)
INTERNAL(MCLAY)
SECLAB(BOND)
PMD
SFA(LGL,SPA)

URGENT

WESTERN SAMOA: CITIZENSHIP

YOUR 1405.
REGRET UNABLE TO CONVEY s9(2)(a) MESSAGE TO s9(2)(a)
SHE DEPARTED APIA FOR AUCKLAND THIS MORNING CARRYING PETITION
(OUR 1253- NOT TO ALL- REFERS) AND IS EXPECTED TO ARRIVE
WELLINGTON THIS EVENING. WE HAVE BEEN UNABLE TO ASCERTAIN
WITH WHOM SHE INTENDS TO MAKE CONTACT, BUT IT IS HIGHLY
LIKELY THAT SHE WILL TRY TO GET IN TOUCH WITH s9(2)(a)
DIRECT. SECRETARY OF GROUP IS s9(2)(a)
s9(2)(a) AND WE COULD PASS MESSAGE TO HER IF s9(2)(a)
s9(2)(a) SO WISHES.

RESTRICTED

85211

07/1130LT/AP1

Richard o/r
Kate
Morgan

311/6/201,

RESTRICTED

RESTRICTED 09 SEPTEMBER 1982
FROM APIA
TO WELLINGTON 1272 -ROUTINE-

P/S MINISTER OF JUSTICE
JUSTICE (LOWE)
INTERNAL (MCLAY)
SECLAB (BOND)
PMD
SFA(LGL,SPA) WILKINSON

WESTERN SAMOA : CITIZENSHIP
YOUR 1428 AND MANSFIELD/CAFFIN TELECON REFER.
2. TEXT OF MR WILKINSON'S MESSAGE GIVEN TO SOCIETY'S PRESIDENT, AEAU SEMI EPATI LAST NIGHT FOLLOWED UP BY LETTER DELIVERED THIS MORNING. EPATI ASKED THAT SOCIETY'S APPRECIATION FOR PROMPTNESS OF REPLY BE CONVEYED TO MR WILKINSON.
=

86277

RESTRICTED

09/1130LT/API

COL: 1428
+++

Richard, DLR
Lowe
Mollin

UNCLAS 13 SEPTEMBER 1982

FROM APIA

TO WELLINGTON 1292

URGENT

-P R I O R I T Y-

311/6/20/1

INTERNAL

SFA(CON)

APPLICATION FOR NZ PASSPORTS : PERSONS BORN WESTERN SAMOA 1924-48

FURTHER TO OUR 1289 FOLLOWING IS LIST OF PERSONS WHO HAVE APPLIED UP TO 4.30 P.M. OUR 13 SEPTEMBER.

s9(2)(a)

s9(2)(a)

s9(2)(a)

s9(2)(a)

s9(2)(a)

s9(2)(a)

s9(2)(a)

87644

13/2102LT/API

COL: CKD

+++

311/6/20/1

CONFIDENTIAL

CONFIDENTIAL 14 SEPTEMBER 1982
FROM APIA
TO WELLINGTON 1293 -I M M E D I A T E-

URGENT

P/S MINISTER OF JUSTICE
JUSTICE (LOWE)
INTERNAL (MCLAY)
SECLAB (BOND)
PMD
SFA (LGL,SPA)

WESTERN SAMOA : CITIZENSHIP

OUR 1286

2. WE PROVED TO BE s6(a) OPTIMISTIC IN OUR ORIGINAL LOW ESTIMATE OF THE NUMBER OF PASSPORT APPLICANTS LIKELY TO COME FORWARD YESTERDAY (13 SEPTEMBER). THE HIGH COMMISSION WAS IN FACT s6(a) FROM 8.00 AM UNTIL 8.30 PM, SO MUCH SO THAT WE HAD - RELUCTANTLY - TO CALL IN POLICE, NOT FOR OUR PROTECTION, BUT FOR THAT OF WAITING APPLICANTS. CROWD WAS GOOD NATURED BUT EXTREMELY PERSISTENT AND ALTHOUGH MR MCLAY'S STATEMENT (YOUR 1454) WAS WIDELY PUBLICISED AND KNOWN TO MANY IT HAD LITTLE DETERRENT EFFECT. EVEN THIS MORNING THERE WERE SOME 40-50 PEOPLE WAITING HOPEFULLY OUTSIDE THE OFFICE, ALTHOUGH THEY HAVE NOW DISPERSED AS KNOWLEDGE OF PASSAGE OF LEGISLATION HAS SUNK IN.

3. IN ALL THE CIRCUMSTANCES WE CONSIDERED WE HAD NO OTHER COURSE OPEN THAN TO ACCEPT THE APPLICATIONS PRESENTED TO US. s6(a)
s6(a)

s6(a) TOWARDS THE END OF THE DAY, IN FACT, MOOD WAS BEGINNING TO GET MORE THAN A LITTLE TENSE AND WE HAD DIFFICULTY CLOSING OUR DOORS.

RICHARDS
LOWE
MORRIS
Please see we are consulted on the reply.

Reply sent [illegible]. Drafted by [illegible], vetted by [illegible] [illegible].

4. AS A RESULT WE HAVE NOW A TOTAL OF SOME 500 PLUS COMPLETED APPLICATIONS ON HAND. s6(a)

s6(a)

s6(a)

ALL WILL HAVE BEEN RECEIVED BEFORE LEGISLATION WAS PASSED. SOME, WE JUDGE, WILL HAVE BEEN PUT IN ON ''SPEC'' WITH LITTLE EXPECTATION OF SUCCESS. MANY, HOWEVER, WILL HAVE BEEN LODGED IN EVERY, s6(a) CONFIDENCE THAT THEY WILL BE ACTED ON.

s6(a)

s6(a)

APPLICATIONS THAT WERE LODGED AFTER PUBLICATION OF RETZLAFF'S STATEMENT, I.E. AFTER FRIDAY, 10 SEPTEMBER AS GOVERNMENT HAS ALREADY COME UNDER CRITICISM FOR NOT MAKING IT CLEAR THAT NZ PASSPORT APPLICATIONS WOULD BE LODGED IMMEDIATELY FOLLOWING PC'S DECISION). OBVIOUSLY QUITE A

87897

CONFIDENTIAL

CONSIDERABLE NUMBER OF PEOPLE WILL BE DISAPPOINTED. WE WOULD THEREFORE APPRECIATE YOUR EARLIEST ADVICE ON WHAT WE SHOULD DO WITH APPLICATIONS WE CURRENTLY HOLD AND GUIDANCE AS TO LINE WE SHOULD SUBSEQUENTLY TAKE WITH UNSUCCESSFUL APPLICANTS.

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14/1245LT/API

COL: CKD

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311/6/20/1

CONFIDENTIAL

CONFIDENTIAL 28 SEPTEMBER 1982
FROM APIA
TO WELLINGTON 1356 -ROUTINE-

PMD
SFA(SPA,LGL)

WESTERN SAMOA : CITIZENSHIP

s6(a); s6(b) OUR 1350 AND YOUR 1517

RICHARDS
LOOSE
MORRIS

s6(a); s6(b)

CONFIDENTIAL

s6(a); s6(b)

CONFIDENTIAL

28/1445LT/API

please place on top of file 311/6/20/1

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INTRODUCTION

The purpose of this bulletin is to gather together under one cover the judgement of the Judicial Committee of the Privy Council in the Case of *Lesa v Attorney-General*, and some of the most important written material on the discussion which followed that decision, including the address by the Minister of Justice, the Hon. J.K. McLay, introducing the Citizenship (Western Samoa) Bill into the New Zealand Parliament and some papers submitted to the Foreign Affairs Committee during its public hearings on the Bill. Also reproduced is the text of the Act which was enacted by the New Zealand Parliament on 14 September 1982.

Western Samoa: Citizenship Issue — Summary of Events

On 19 July the judicial committee of the Privy Council delivered a decision on the test case *Lesa v Attorney-General*, overruling the Court of Appeal and ruling, in effect, that all Western Samoans born in Western Samoa between 1924 and 1949 were British subjects and, therefore, New Zealand citizens. The Prime Minister, Mr Muldoon, met the Western Samoan Prime Minister, Va'ai Kolone, after the South Pacific Forum meeting at Rotorua in August, to discuss the implications of the decision and what action should be taken as a result.

After a series of discussions between the New Zealand and Western Samoan governments, agreement was reached on a protocol to the 1962 Treaty of Friendship between the two countries. The protocol was signed in Apia on 21 August by the Deputy Prime Minister of Western Samoa, Tofilau Iti, and the New Zealand Attorney-General and Minister of Justice, the Hon. J.K. McLay.

Legislation — the Citizenship (Western Samoa) Bill — implementing the protocol and reversing the effect of the Privy Council decision was introduced into Parliament on 24 August and then was referred to the Foreign Affairs Select Committee for consideration. The committee heard submissions from the general public on the Bill, which was finally passed into law on 15 September.

PRIVY COUNCIL APPEAL NO. 43 OF 1981

Falema'I Lesa, Appellant

v.

Attorney-General, Respondent

from

The Court of Appeal of New Zealand

Reasons for report of the Lords of the Judicial Committee of the Privy Council of the 19th July 1982, delivered the 28th July 1982.

Present at the Hearing:

Lord Diplock
Lord Elwyn-Jones
Lord Keith of Kinkel
Lord Brandon of Oakbrook
Sir John Megaw

(Delivered by Lord Diplock)

The appellant was born in Western Samoa on a date between the coming into force of the British Nationality and Status of Aliens (in New Zealand) Act, 1928, ("the Act of 1928") and its repeal and replacement by the British Nationality and New Zealand Citizenship Act, 1948. She claims that on the true construction of the Act of 1928 by virtue of her birth in Western Samoa during that period she became, so far as New Zealand law is concerned, a natural-born British subject and she seeks in the instant appeal a declaration to that effect. If she be right on the construction of the Act of 1928 the consequence would be that upon the coming into force of the Act of 1928 she became under section 16 (3) of that Act a New Zealand citizen, and under section 13 of the Citizenship Act, 1977, has continued to be one ever since.

The importance to the appellant of establishing her New Zealand citizenship is that it frees her from all restraints upon her continued stay in New Zealand that are imposed on immigrants by the Immigration Act, 1964. The appellant in the instant case is an "overstayer", as was the appellant in *Levave v Immigration Department* [1979] 2 NZLR 74. On arrival in New Zealand she had been granted a permit to stay for a limited period and had remained in New Zealand after that period had expired — an offence under section 14(5) of the Immigration Act, 1964, for which she is currently being prosecuted. *Levave v Immigration Department* came before the Court of Appeal upon an appeal in a similar prosecution before a magistrate's Court, on which the decision of the Court of Appeal is final; no further appeal lies to Her Majesty in Council. It was in order to enable such further appeal to be brought that the proceedings in the instant case have taken the form of an originating summons seeking a declaration as to the construction of the Act of 1928.

The decision of the Court of Appeal in the *Levave* case turned on the construction not of the Act of 1928 but of its predecessor, the British Nationality and Status of Aliens (in New Zealand) Act, 1923 ("the Act of 1923"). The wording of the provision in that Act principally relied on by the appellant in the *Levave* case, section 14(1), was identical to the wording of the corresponding section, section 7(1) of the Act of 1928 that is principally relied on by the appellant in the instant case, which reads as follows : —

> "7.(1) Subject to the provisions of this section, this Act shall apply to the Cook Islands and to Western Samoa in the same manner in all respects as if those territories were for all purposes part of New Zealand; and the term 'New Zealand' as used in this Act shall, both in New Zealand and in the said territories respectively, be construed accordingly as including the Cook Islands and Western Samoa."

There are however substantial differences between other provisions of the two Acts which fix the contexts in which those two identically worded subsections fall respectively to be construed. Unfortunately, in the instant case, because it was common ground between the parties that the decision of the Court of Appeal in the *Levave* case was decisive of the instant case in that Court, no substantive argument based upon the terms of the Act of 1928, looked at as a whole, was advanced by either party in the Courts below; and, doubly unfortunately, this resulted in there not having been brought to the attention of the Court of Appeal a formidable argument, which makes the Court of Appeal's reasoning in the *Levave* case more difficult to sustain when it is sought to apply it to the construction of the Act of 1928 instead of to the construction of the Act of 1923. This argument, of which the appellant's written case to this Board gave no forewarning, emerged for the first time in the closing stages of the appellant's counsel's opening speech. A less powerful variant of that argument would have been available on the construction of the Act of 1923, but it had not been advanced in the Court of Appeal by the appellant in the *Levave* case.

Their Lordships will accordingly go straight to the Act of 1928 and first consider its construction independently of the Act of 1923 which it repealed. The long title of the Act of 1928 reads as follows:-

> "An Act to adopt Part II of the British Nationality and Status of Aliens Act, 1914 (Imperial), to make certain Provisions relating to British Nationality and the Status of Aliens in New Zealand, and also to make Special Provisions with respect to the Naturalization of Persons resident in Western Samoa."

So part of its purport and object is to provide a way for persons resident in Western Samoa to become British subjects by naturalization.

Section 2 defines the "Imperial Act" as the British Nationality and Status of Aliens Act, 1914; and section 3 provides

> "Part II of the Imperial Act (the said part being set out in the First Schedule hereto) is hereby adopted."

The First Schedule sets out in its entirety Part II of the Imperial Act which bears the heading "Naturalization of Alliens". Those sections set out in the First Schedule that are most directly relevant to the question of construction that their Lordships have to answer are the following:

> "2.(1) The Secretary of State may grant a certificate of naturalization to an alien who makes an application for the purpose, and satisfies the Secretary of State —

(a) That he has either resided in His Majesty's dominions for a period of not less than five years in the manner required by this section, or been in the service of the Crown for not less than five years within the last eight years before the application; and

(b) That he is of good character and has an adequate knowledge of the English language; and

(c) That he intends if his application is granted either to reside in His Majesty's dominions or to enter or continue in the service of the Crown.

(2) The residence required by this section is residence in the United Kingdom for not less than one year immediately preceding this application, and previous residence, either in the United Kingdom or in some other part of His Majesty's dominions, for a period of four years within the last eight years before the application.

7.(2) Without prejudice to the foregoing provisions the Secretary of State shall by order revoke a certificate of naturalization granted by him in any case in which he is satisfied that the person to whom the certificate was granted either -

(a) .....*

(b) Has within five years of the date of the grant of the certificate been sentenced by any Court in His Majesty's dominions to imprisonment for a term of not less than twelve months or to a term of penal servitude, or to a fine of not less than one hundred pounds;

or

(c) .....*

(d) Has since the date of the grant of certificcate been for a period of not less than seven years ordinarily resident out of His Majesty's dominions, ... and has not maintained substantial connection with His Majesty's dominions;

or

(e) ..... *

8.(1) The Government of any British Possession shall have the same power to grant a certificate of naturalization as the Secretary of State has under this Act, and the provisions of this Act as to the grant and revocation of such a certificate shall apply accordingly, with the substitution of the Government of the Possession for the Secretary of State, and the Possession for the United Kingdom, and of a High Court or superior Court of the Possession for the High Court, and with the omission of any reference to the approval of the Lord Chancellor, and also, in a Possession where any language is recognized as on an equality with the English language, with the substitution of the English language or that language for the English language: .....

(2) Any certificate of naturalization granted under this section shall have the same effect as a certificate of naturalization granted by the Secretary of State under this Act.

9. (1). This part of this Act shall not, nor shall any certificate of naturalization granted thereunder, have effect within any of the Dominions specified in the First Schedule to this Act, unless the Legislature of that Dominion adopts this Part of this Act.

(2) Where the Legislature of any such Dominion has adopted this Part of this Act, the Government of the Dominion shall have the like powers to make regulations with respect to certificates of naturalization and to oaths of allegiance as are conferred by this Act on the Secretary of State.

(3) The Legislature of any such Dominion which adopts this Part of this Act may provide how and by what Department of the Government the powers conferred by this Part of this Act on the Government of a British Possession are to be exercised.

(4) ..... "*

These were provisions contained in an Act of the United Kingdom Parliament, to which the United Kingdom Interpretation Act, 1889, applied. So far as is relevant, the definition in the Interpretation Act 1889 of the expression "British Possession" which appears in sections 8 and 9 of the First Schedule to the Act of 1928 was "any part of Her Majesty's dominions exclusive of the United Kingdom".

It follows that unless, during the period between the coming into effect of the Act of 1928 and its repeal by the Act of 1948, Western Samoa was to be treated, for the purposes of the Act of 1928, as part of His Majesty's dominions, the combined effect of section 8(1) and 2(1) and (2) of the Imperial Act set out in the First Schedule of the Act of 1928 would have been that past residence in Western Samoa could not enable a person to acquire

* These parts of the text being quoted were left out, as irrelevant, by the authors of this report.

the necessary qualification for naturalization under section 2(1) (a) and (2). Nor would an intention of future residence in Western Samoa satisfy the requirements of section 2(1) (c); on the contrary, seven years' residence in Western Samoa after naturalization would render a person's certificate of naturalization liable to revocation under section 7(2) (d). The adoption of Part II of the Imperial Act would, therefore, not be sufficient of itself to effect the object expressed in the long title of the Act of 1928 "to make Special Provisions with respect to the Naturalization of Persons resident in Western Samoa", unless the effect of section 7(1) was to require Western Samoa to be treated as being "in His Majesty's dominions" for the purposes of the provisions contained in the First Schedule.

Section 6 of the Act of 1928 which, although expressed more succinctly, is substantially to the same effect as section 3 of the Act of 1923, reads as follows: -

> "6. The several provisions of the Imperial Acts set forth in the Second Schedule to this Act, in so far as the said provisions are capable of application in New Zealand, are hereby declared to be part of the law of New Zealand."

The provisions of the Imperial Acts set out in the Second Schedule which are directly relevant to the instant appeal are in Part I of the Imperial Act of 1914 under the heading "Natural-Born British Subjects". They are :-

> "1. (1) The following persons shall be deemed to be natural-born British subjects namely:-
>
> (a) Any persons born within His Majesty's Dominions and allegiance; and
>
> (b) Any person born out of His Majesty's dominions whose father was, at the time of that person's birth, a British subject, and who fulfills any of the following conditions, that is to say, if either —
>
> (i) His father was born within His Majesty's allegiance;
> or
> (ii) His father was a person to whom a certificate of naturalization had been granted;
> or
> (iii) His father had become a British subject by reason of any annexation of territory;
> or
> (iv) His father was at the time of that person's birth in the service of the Crown;
> or
> (v) His birth was registered at a British consulate within one year or in special circumstances, with the consent of the Secretary of State, two years after its occurrence, or, in the case of a person born on or after the first day of January, nineteen hundred and fifteen, who would have been a British subject if born before that date, within twelve months after the first day of August, nineteen hundred and twenty-two;
> and
>
> (c) Any person born on board a British ship, whether in foreign territorial waters or not:
>
> Provided that the child of a British subject, whether that child was born before or after the passing of this Act, shall be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty exercises jurisdiction over British subjects:"

In the instant case the appellant's claim to have been a natural-born British subject at the time of the passing of the Act of 1948, and therefore to have then become a citizen of New Zealand, is based on the proposition that the effect of section 7(1) of the Act of 1928 is to require Western Samoa to be treated as "within His Majesty's Dominions and allegiance" for the purposes of the provisions of section 1 of the Imperial Act contained in the Second Schedule to the Act of 1928. So it is section 7 that is crucial to her claim to be a natural-born British subject in New Zealand law despite the fact that she would not be deemed a natural-born British subject under the Imperial Act itself.

For convenience of reference their Lordships set section 7 out here in full although this involves repetition of subsection (1) which has already been cited in this opinion :-

> "7. (1) Subject to the provisions of this section, this Act shall apply to the Cook Islands and to Western Samoa in the same manner in all respects as if those territorials were for all purposes part of New Zealand; and the term 'New Zealand' as used in this Act shall, both in New Zealand and the said territories respectively, be construed accordingly as including the Cook Islands and Western Samoa.
>
> (2) In the application of this Act to the Cook Islands and Western Samoa —
>
> (a) The power to grant certificates of naturalization shall be vested in the Governor-General, and in the case of a person resident in the Cook Islands shall be exercised on the recommendation of the Minister for the Cook Islands, and in the case of a person resident in

Western Samoa shall be exercised on the recommendation of the Minister of External Affairs:

(a) The oath of allegiance shall be taken before a Judge or Commissioner of the High Court of the Cook Islands, or a Judge or Commissioner of the High Court of Western Samoa, as the case may require, and every such Judge and Commissioner is hereby respectively authorized to administer the said oath accordingly:

(c) The powers conferred by section five of the Imperial Act, in its application to New Zealand shall be vested in the Governor-General:

(d) The powers conferred by sections seven and seven (A) of the Imperial Act, in its application to New Zealand, shall be exercised only by the Governor-General in Council."

Subsection (1) is in two parts separated by a semi-colon. The second part after the semi-colon is merely an interpretation provision giving to the expression "New Zealand", wherever it appears in the Act of 1928, a more extended meaning than it would otherwise bear by virtue of section 4 of the Acts Interpretation Act 1924, viz "the Dominion of New Zealand, comprising all islands and territories within the limits thereof for the time being other than the Cook Islands".

The first part of subsection (1), however appears to state emphatically and unequivocally that the whole of the Act, subject only to such modifications as are contained in section 7 itself, i.e. in subsection (2), are to apply both to the Cook Islands and to Western Samoa in the same manner in all respects as if those territories were for all purposes part of New Zealand. The reference to their being "part of New Zealand" echoes, in the case of the Cook Islands, the Order in Council of 1901, referred to in the preamble to the Cook Islands Act, 1915, under which it was ordered that the Cook Islands "should form part of New Zealand"; and, in the case of Western Samoa, Article 2 of the League of Nations Mandate for German Samoa scheduled to the Samoa Act, 1921, which provided:

> "The Mandatory shall have full power of administration and legislation over the Territory, subject to the present mandate, as an integral portion of the Dominion of New Zealand to the Territory, subject to such local modifications as circumstances may require.
>
> The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the Territory subject to the present mandate."

Since in 1928 New Zealand formed part of His Majesty's dominions and was within His Majesty's allegiance, if the Act is to apply to Western Samoa "in the same manner in all respects" as if that geographical area were "for all purposes part of New Zealand", the unambiguous meaning of section 7(1) would appear to be that Western Samoa as well as New Zealand proper and the Cook Islands must be treated as part of His Majesty's dominions and within His Majesty's allegiance, in every case where the status of any person in New Zealand either as a natural-born British subject or as an alien eligible for naturalization as a British subject depends upon his, or his father's, having been born in Western Samoa or, in the case of eligibility for naturalization, upon his having resided there.

It is, in their Lordships' view, impossible to read down section 7(1) of the Act of 1928, as confined to the naturalization of aliens residing in the Cook Islands and Western Samoa, as the Court of Appeal felt able to do with the corresponding section 14(1) of the Act of 1923 in the *Levave* case. Section 7(2)(a) plainly contemplates that residence in Western Samoa during the year immediately preceding an application shall constitute the residence required to qualify for naturalization under section 2(1)(a) and (2) of the Imperial Act set out in the First Schedule as applicable in New Zealand with the modifications for which section 8(1) of the Imperial Act provides. But under section 2(1)(a) of the Imperial Act the required residence must have been "in His Majesty's dominions" and, under section 2(2) as modified by section 8(1), the residence for not less than one year immediately preceding the application must be in a part of His Majesty's dominions exclusive of the United Kingdom. So if section 7(1) and (2) had any effect at all in New Zealand law to enable aliens resident in Western Samoa to be naturalized as British subjects, which was one of the objects stated in the long title to the Act, section 7(1) must have had the effect of requiring the territory of Western Samoa to be included in the description "His Majesty's dominions" wherever that expression is used in the provisions of the Imperial Act set out in the First Schedule to the Act of 1928, and also included in the description "British Possession" in section 8(1) of the Imperial Act.

If this be so, and it seems to their Lordships to be inescapable, it would seem also to follow from the emphatic generality of section 7(1) — "in the same manner in all respects" and "for all purposes part of New Zealand" — that the section requires that the territory of Western Samoa is to be treated as included in the description "His Majesty's Dominions and allegiance" in the definition of persons who shall be deemed to be natural-born British subjects in section 1 of the Imperial Act set out in the Second Schedule and declared to be part of the law of New Zealand by section 6 of the Act of 1928. The only

distinction between this description and the corresponding description of territory in Part II of the Imperial Act, birth within which confers the status of a natural-born British subject, is the addition of the words "and allegiance". But it is horn book law, or at any rate well-established as long ago as *Calvin's Case* (1608) 7 Co.Rep. 1a that a person born within His Majesty's dominions did by virtue of his birth there of itself owe natural allegiance to His Majesty, unless he was born there either (a) as a child to the diplomatic representative of a foreign state or, to use the older terminology, a "public minister"of a foreign state, who at common law (which in this respect followed the Law of Nations) owed no allegiance, even local, to the sovereign to whom he was accredited (*Magdalena Steam Navigation Co. v. Martin* (1859) 2 El. and El.94); or (b) was born as a child of a member of an invading force of an enemy power or of an alien in an enemy-occupied part of His Majesty's dominions.

The reasons why in sub-paragraph (i) of paragraph (b) of section 1 (1), which deals with British subjects by descent, the reference to the father of a person claiming to be a natural-born British subject, refers only to the father's having been born "within His Majesty's allegiance" and omits any reference to his having been born within His Majesty's dominions, are to be found mainly in the first proviso which refers to foreign territories in which the Crown exercised jurisdiction over British subjects under the Foreign Jurisdiction Act 1890 although such territories did not form part of His Majesty's dominions. Most other British subjects born in foreign territory but yet within His Majesty's allegiance, such as children born to British diplomats in the foreign state to which they were accredited and children born to male members of British forces on foreign soil, would be covered by sub-paragraph (b)(iv) of section 1(1) of the Imperial Act but the heir to the throne and the children of the sovereign if born abroad would be born within His Majesty's allegiance but not within his dominions and sub-paragraph (b) (i) caters for them also.

Their Lordships therefore cannot see how any principle of construction would justify them in holding on the one hand that section 7(1) required Western Samoa to be treated in the same way as if it were part of New Zealand in the respect that New Zealand was "in His Majesty's dominions" for the purposes of the provision of Part II of the Imperial Act declared to be adopted by section 3 of the Act of 1928, (as it must be if the declared object of the Act of making provision for the naturalization of persons resident in Western Samoa is not to be utterly defeated), yet would justify them on the other hand in holding that section 7(1) did *not* require Western Samoa to be treated as if it were part of New Zealand in the respect that New Zealand was within "His Majesty's Dominions and allegiance" or "within His Majesty's allegiance" for the purpose of section 1(1) of the Imperial Act declared by section 6 of the Act of 1928 to be part of the law of New Zealand.

In their Lordships' view, there is no escaping that section 7(1) of the Act of 1928 means what is so emphatically and unequivocally says: a person born or resident in Western Samoa is to be treated in the same manner in all respects for all purposes of the Act of 1928 as if he had been born or resident in New Zealand proper.

Their Lordships now turn to a consideration of the reasoning of the Court of Appeal in the *Levave* case. They emphasise that what fell to be construed in that case was the Act of 1923. Its terms presented less formidable obstacles to construing section 14(1) of that Act as confined to the naturalization of aliens residing in the Cook Islands and Western Samoa than the obstacles which in their Lordships' view prevent a similar limited construction being given to section 7 of the Act of 1928. The Act of 1923 declared to be part of the law of New Zealand those provisions of the Imperial Act that were subsequently set out in Schedule 2 of the Act of 1928, including, in particular, section 1 of The Imperial Act defining natural-born British subjects, but it did not adopt Part II of the Imperial Act. Instead, by sections 4 to 12, the Act of 1923 provided for its own system of local naturalization. The relevant qualification for local naturalization was dealt with by sections 4 and 5. It was residence "within New Zealand" and thus, by the extended definition of New Zealand for which the second part of section 14(1) provided, included residence in the Cook Islands or Western Samoa. The only reference to "His Majesty's dominions" in the naturalization provisions occurred in section 5(1)(c) which required the minister to be satisfied that the applicant for naturalization intended "to continue to reside in His Majesty's dominions, or to enter, or continue in, the service of the Crown".

This provision does not appear to have been drawn to the attention of the Court of Appeal in the *Levave* case. If it had been one does not know how it would have affected that Court's decision. It is necessarily implicit in the reference to "continue to reside" that residence in Western Samoa which qualified the applicant for the grant of a certificate of naturalization was treated by the draftsman as residence in His Majesty's dominions. Furthermore, if it were right that the first part of section 14(1) did not have the effect of requiring Western Samoa to be treated as part of New Zealand and therefore within His Majesty's dominions, at any rate for the purposes of section 5(1)(c) of the Act of 1923, sections 4 and 5 would have the result that aliens resident in Western Samoa could not obtain naturalization, if they intended to go on residing there but could only obtain it if they wanted to emigrate from Western Samoa to New Zealand proper or to the Cook Islands.

This result can hardly have been that intended by the New Zealand Parliament; and because the Court of Appeal were not referred to section 5(1)(c), it is not what the Court of Appeal regarded as being the effect of section 14(1) on the naturalization provisions of the Act.

The referring to the language of the first part of section 14(1) of the Act of 1923, the Court of Appeal in the *Levave* case omitted what in their Lordships' view are the important words, "in the same manner in all respects". If effect is given to these words it is not in their Lordships' view possible to say that the only natural meaning of the first part of the subsection is that natural-born British subjects born within His Majesty's dominions and allegiance are to be treated as natural-born British subjects under the law of the Cook Islands and the law of Western Samoa. It is not suggested how such a limited provision could affect the status of such persons in either territory. Nor, in their Lordships' view, is any ground for failing to give to section 14(1) what would otherwise be its plain meaning provided by the fact that the subsection would have greater consequences in Western Samoa since the Cook Islands were already part of His Majesty's dominions and so long as they remained so persons born there would be deemed to be natural-born British subjects without the assistance of section 14(1).

The strongest argument relied on in the *Levave* case in favour of giving to the Act of 1923 a construction that did not involve treating as a British national in New Zealand persons born in Western Samoa after the passing of the Act is to be found in the resolutions of the Council of the League of Nations resolved upon in 1923 shortly before the Act was passed. They are set out in the judgement. Their meaning is not expressed with crystal clarity, but it would be right to say that they deprecate the automatic bestowal of the nationality of the Mandatory Power upon inhabitants of the Mandatory territory; though there would appear to be some inconsistency here with the provision in Article 2 of the terms of the Mandate that Western Samoa was to be governed as an "integral portion of the Dominion of New Zealand". The Act of 1923 spoke for the future; it did not on any view of its construction bestow New Zealand nationality upon any native inhabitants of Samoa born before the passing of the Act; they retained whatever nationality, if any, they had previously possessed. Despite the fact that the resolutions did not impose upon the Government of New Zealand any obligation binding upon it in international law, their Lordships agree with the Court of Appeal that the resolutions would be relevant in resolving any ambiguity in the meaning of the language which is common to section 14(1) of the Act of 1923 and section 7(1) of the Act of 1928. They are, however, unable, for the reasons already stated, to discern any ambiguity or lack or clarity in that language in its application to section 1 of the Imperial Act adopted as part of the law of New Zealand by both the Act of 1923 and the Act of 1928.

For these reasons their Lordships will humbly advise Her Majesty that this appeal should be allowed, and the question asked in the originating summons should be answered Yes. The respondent must pay the appellant's costs of this appeal. As the point on which the appellant has succeeded was not taken in the Court of Appeal each party should bear their own costs in that Court.

The following press statement was released by the Rt Hon. R.D. Muldoon on 29 July 1982

The reasons for the judgment now published set out the considerations behind the Privy Council's decision last week. That decision held that on an interpretation of legislation passed in 1923 and 1928, persons born in Western Samoa between 1924 and 1948 became in the eyes of New Zealand law British subjects just as if they had been born in New Zealand. The decision therefore turned on the interpretation of two statutes passed more than 50 years ago (and repealed in 1948). It did not turn on the wider international obligations understood by New Zealand under its mandate and subsequent trusteeship for Western Samoa.

The Council's decision has declared the law for New Zealand. The appeal was on a point of New Zealand law and there was therefore no question of Samoa being represented at the Council proceedings.

The decision has however created an anomalous situation for both New Zealand and Western Samoa. It declares the assumptions on which both Governments and parliaments have acted in their legislation and administrative practice over a period of nearly 60 years to have been wrong.

The important thing now is for the two Governments to consult about the implications and the future. For this reason, as soon as the decision was announced, I cabled the Samoan Prime Minister, and he and I will have detailed talks immediately after the South Pacific Forum during the second week of August.

In the meantime the law is as declared by the Council. There is no change in the rules for issuing New Zealand passports. All applicants who have the necessary papers and proof of their citizenship can receive a passport and will be dealt with in the same way.

The normal time for the issuance of a passport after the proof has been supplied is between two and three weeks. I do not therefore expect there will be any significant changes in the situation before I talk to the Samoan Prime Minister.

CORRESPONDENCE BETWEEN

Hon. Taisi Tupuola Efi, M.P.

and

The New Zealand Attorney-General, Hon. J.K. McLay

P.O. Box 210,
Tuaefu,
APIA.

20 August 1982

Dear Mr McLay.
s6(a); s6(b)

s6(a); s6(b)

Yours very sincerely,

(TAISI TUPUOLA EFI)

As from the Office of the
New Zealand High Commissioner,
APIA.

21 August 1982

s6(a); s6(b)

s6(a); s6(b)

s6(a); s6(b)

J.K. McLay
Attorney-General and Minister of Justice

Hon. Taisi Tupuola Efi MP,
P.O. Box 210,
Tuaefu,
APIA.

[PROTOCOL REPRODUCED IN FULL]

A. 56

PROTOCOL

TO THE TREATY OF FRIENDSHIP BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF WESTERN SAMOA

Apia, 21 August 1982
[Not yet in force]

Presented to the House of Representatives by Leave

BY AUTHORITY:
P. D. HASSELBERG, GOVERNMENT PRINTER, WELLINGTON, NEW ZEALAND—1982

Price 35c

PROTOCOL TO THE TREATY OF FRIENDSHIP BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF WESTERN SAMOA

The Government of New Zealand and the Government of Western Samoa,

Reaffirming that their relations are founded upon sovereign equality and continue to be governed by a spirit of close friendship,

Recognising that the special relationship between New Zealand and Western Samoa requires that issues affecting the two countries and their citizens should be resolved on a co-operative basis,

Having considered the circumstances under which citizens of Western Samoa could appropriately acquire citizenship of New Zealand,

Noting that, in accordance with international law and practice, it is for each country to determine under its own law who are its citizens,

Recognising that a country normally grants citizenship only to those individuals having a close and effective link with it,

Recognising further that the ties of history, friendship and law between New Zealand and Western Samoa are such as to give the citizens of Western Samoa a claim to special treatment under the New Zealand law governing citizenship,

Have agreed as follows:

ARTICLE I

At the request of either, the two Governments shall consult on any issue relating to the operation of their respective laws governing citizenship and immigration.

ARTICLE II

The Government of New Zealand shall:

(a) grant to all citizens of Western Samoa in New Zealand on the date of entry into force of this Protocol the right to become New Zealand citizens immediately upon application;

(b) grant to those citizens of Western Samoa who travel to New Zealand after the entry into force of this Protocol and who, pursuant to the policy and practice implemented by New Zealand prior to 19 July 1982, would have been granted permanent residence status either on arrival in New Zealand or subsequently, the additional right to become New Zealand citizens immediately upon application after acquisition of permanent residence status.

ARTICLE III

For the purposes of this Protocol the term 'New Zealand' shall not include the Cook Islands, Niue or Tokelau.

ARTICLE IV

This Protocol shall be read with, and form an integral part of, the Treaty of Friendship between the Government of New Zealand and the Government of Western Samoa done at Apia on 1 August 1962.

ARTICLE V

This Protocol shall be subject to ratification. It shall enter into force on the date of the exchange of instruments of ratification.

IN WITNESS WHEREOF the representative of the Government of New Zealand and the representative of the Government of Western Samoa, duly authorised for the purpose, have signed this Agreement.

DONE at Apia this 21st day of August 1982 in four originals, two being in the English language, and two in the Samoan language, the texts of both languages being equally authentic.

For the Government of
New Zealand
J. K. McLAY

For the Government of
Western Samoa
TOFILAU ETI

[Samoan text not reproduced]

BY AUTHORITY:
P. D. HASSELBERG, GOVERNMENT PRINTER, WELLINGTON, NEW ZEALAND—1982
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DEBATE IN THE HOUSE OF REPRESENTATIVES ON THE CITIZENSHIP (WESTERN SAMOA) BILL

The following is the complete Hansard record of the 24 August 1982 debate.

CITIZENSHIP (WESTERN SAMOA) BILL

Introduction

Hon. J. K. McLAY (Attorney-General): I move, *That the Citizenship (Western Samoa) Bill be introduced.* The Bill gives effect, for the purposes of New Zealand law, to the Protocol to the Treaty of Friendship of 1962, which was entered into on 21 August, Samoan time, with the Government of Western Samoa. It deals with the situation that has arisen since the Judicial Committee of the Privy Council delivered its decision in *Lesa* v. *Attorney-General* on 19 July 1982. While the background is well known, it is none the less appropriate that it should be briefly traversed on the occasion of the introduction of the Bill, which I would propose be referred to the Foreign Affairs Committee.

Never in our history has there been unrestricted entry into New Zealand for people living in Western Samoa. However, Government policies have for many years allowed a substantial number of Western Samoans to take up permanent residence in New Zealand. That quota has been varied from time to time as our economic circumstances, and especially our employment levels, have dictated. Perhaps it should be emphasised that the quota system is unique. There is no other country whose residents are not New Zealand citizens but who are none the less, regardless of their skills, accorded entry into New Zealand as part of a quota that is over and above the tight immigration criteria that would otherwise normally apply to their application. In addition, other Samoans have come to New Zealand temporarily as visitors under the work permit scheme since 1977, and for other particular purposes. Some who have come temporarily have subsequently been granted permanent residence. Others remained in New Zealand after their permits expired. In terms of the law, as it was then understood to be, they became illegal immigrants—in popular language, "overstayers". Those who were discovered were prosecuted, and on being convicted of a breach of the immigration laws were deported.

Miss Lesa was an overstayer. She was duly charged. She claimed, however, that she was not liable to conviction or deportation, because, although born in Western Samoa, she was a New Zealand citizen. She argued that, under New Zealand law, all persons born in Samoa

between 1928, when the British Nationality and Status of Aliens (in New Zealand) Act came into force, and 1 January 1949, the commencement date of the British Nationality and New Zealand Citizenship Act 1948, were natural-born British subjects, and became New Zealand citizens by virtue of the 1948 Act. As a New Zealand citizen, she could not be deported from this country. Our Court of Appeal had rejected a similar contention in the 1979 case of *Levave v. Immigration Department.* In fact, in the Lesa case, the judges of the Court of Appeal had described the proposition as "inconceivable".

The Levave case was a criminal matter, originating in the district court. In such cases the Court of Appeal is the final appeal authority. To enable Miss Lesa's case to be brought before the Privy Council, she applied for a declaration as to the interpretation of the 1928 Act. On 19 July the Privy Council delivered its decision. Much to the surprise of most of us, it overruled the Court of Appeal and upheld Miss Lesa's claim that she was a British subject in 1948, and, hence, a New Zealand citizen now. I should explain that, although the Lesa decision was based on the 1928 Act, it is almost certain that, applying the same reasoning, an identical result would also arise under the previous 1923 Act.

The Privy Council's interpretation of the 1928 Act remains as the law of New Zealand unless and until legislation reverses it. Indeed, if the law as declared by the Privy Council is to be changed, that can be done only by legislation. As Lord Darling said when delivering the judgment of the Judicial Committee on *Abeyesekera v. Jayatilake* (1932) AC 260,267: "It may be true that 'not Jove himself upon the past hath power'; but legislators have certainly the right to prevent, alter, or reverse the consequences of their past decrees." It would, therefore, be pointless for me on this occasion to speculate whether the Privy Council's decision in the Lesa case is legally sound. I may do that at some other time. I can, however, say categorically that it did not accord with the past understanding of the law, either in New Zealand or in Samoa—an understanding that has consistently shaped both legislation and practice in both countries.

For 60 years no one had believed that persons of Western Samoan origin in Western Samoa were at any time, or should have been, British subjects owing allegiance to the British Crown. Certainly, the Samoan Working Committee on Self Government was firmly of the view not only that upon independence Samoans should have their own separate Samoan citizenship, as befitted the citizens of a sovereign independent State, but also that they should not hold the citizenship of any other State. The Citizenship of Western Samoa Ordinance of 1959 reflected this view, and for the 20 years since independence the Governments and people of Western Samoa and New Zealand have proceeded upon the clear basis that Western Samoan citizenship and New Zealand citizenship were quite separate and distinct.

The Privy Council decision was based solely on a legal construction of the relevant Acts of the New Zealand Parliament, and did not take into account any matters of international law and practice, nor, obviously, the law of Western Samoa. What that decision meant, however, was that those statutes produced an unintended result that is contrary to the firm view expressed by the League of Nations that the inhabitants of mandated territories did not, and should not, automatically become invested with the citizenship of the mandatory country. That result was also contrary to the assurance given by the New Zealand Government to the league that Samoans were not British subjects. It was contrary to the assumptions upon which the Samoan Working Committee on Self Government based its work, and upon which the act of independence proceeded. It was contrary to the general practice throughout the Commonwealth, after the abandonment of the common code relating to the status of British subjects, that inhabitants of each country that became independent would cease to be citizens, or protected persons of the former colonial power, and would acquire their own separate citizenship.

Finally, it was contrary to the basis on which the Western Samoan and New Zealand Governments and the people of each country had conducted their affairs since Western Samoa's independence in 1962. Indeed, had the New Zealand Parliament in 1982 moved to pass a law that had precisely the same effect as the Privy Council decision, it would almost certainly, and very properly, have been regarded by the Government and people of Western Samoa as an unfriendly act towards a sovereign and independent State. Moreover, as construed by the Privy Council, the New Zealand statute of 1928 not only failed to produce the result generally believed of it, but also gave rise to a situation which, if left unremedied,

would have had serious and far-reaching implications for both New Zealand and Western Samoa.

Precisely how many people have the status of New Zealand citizens as a result of the decision is uncertain. The best estimates by both Governments are something of the order of 100 000 people—over three-fifths of the present total population of Western Samoa, which is 160 000. A careful analysis of the law has revealed that 11 separate classes of people could have become New Zealand citizens by virtue of the decision. Some of these groups are very small in number. However, the principal categories are: first, all persons born in Western Samoa between May 1924 and the end of 1948; secondly, all children born in wedlock at any time of a father who had himself been born in Western Samoa during that period; and, thirdly, the wives of any such persons if married to them before 1949.

Confronted with what could not unfairly be described as a constitutional bombshell, it appeared initially that the Government had three options. The first option was to do nothing and let the decision have its effect. That was simply not acceptable to the Government, nor, I add, to either of the other parties in the House. Even though there was no evidence of an immediate wave of migration from Samoa to New Zealand, we simply could not live with a situation whereby scores of thousands of people born and living outside New Zealand could come and reside here at any time, and inevitably make claims on our resources and facilities. Virtually every country, including Western Samoa, imposes restrictions on entry by immigrants. No country could operate its immigration policy on the assumption that if there were no restrictions people would not seek to come to live there on a permanent basis.

The second option was to accept the decision, but to continue to restrict entry of persons from Western Samoa. That presented serious disadvantages, both of principle and administration. It would ultimately create two classes of New Zealand citizens, one with inferior rights. The third option was to restore the law as it was thought to be before the decision, by Parliament's passing a law to that effect.

Faced with this situation and these apparent options, and in view of the fact that the problem arose solely because of a seeming deficiency in an early New Zealand statute, the New Zealand Government could simply, and with considerable justification, have promoted legislation to rectify the situation. However, in view of the close relationship between New Zealand and Western Samoa, and because the Privy Council's decision also had implications for Western Samoa even though it related solely to New Zealand law, the Government, rather than bring down instant legislation, decided to consult the Government of Western Samoa to try to find a response that both countries could accept. We did not want New Zealand simply to impose its ideas and pursue its interests unilaterally. So in the spirit of the 1962 Treaty of Friendship between Samoa and New Zealand we sat down to talk to each other. The Government also took the other parties in the House into its confidence, and in that regard I thank the Deputy Leader of the Opposition for his co-operation and assistance over the past 4 days.

From all these talks emerged the protocol that I signed for New Zealand on 21 August 1982, Samoan time. That protocol, which has just been tabled in the House, contains three principal provisions: first, the two Governments undertake on request to consult on any issue relating to the operation of citizenship and immigration laws; secondly, New Zealand will give Western Samoan citizens in New Zealand the right to become New Zealand citizens immediately on applicaton; and, thirdly, New Zealand will give the same right to Western Samoans who are subsequently granted permanent residence in New Zealand.

Members will appreciate that this is a wider approach than simply protecting the status of those in New Zealand whom the Lesa decision declares to be New Zealand citizens. To sort out who would be entitled in terms of the decision would be a very difficult administrative task, so the Bill covers all Western Samoan citizens who are in New Zealand at its commencement. Against that background, I now come to the detailed provisions of the Bill. It will come into force on the day it is assented to.

Clause 1 is the short title. Clause 2 makes it clear that New Zealand, for the purposes of the Bill, does not include the Cook Islands, Niue, or Tokelau. Clause 3 provides that the Act shall bind the Crown. Clause 4 defines the persons to whom the Act is to apply. Clause 5 confirms the New Zealand citizenship of Miss Lesa. Clause 6 states that these persons are not to be New Zealand citizens, thereby reversing the effect of the judicial committee's decision. It must be emphasised that this will not make anyone stateless. Those affected are,

and will remain, citizens of Western Samoa, as they have always believed themselves to be. Samoa is their country.

Clause 7 then modifies this in three important ways. It gives all Western Samoans who will be in New Zealand at the commencement of the Act the right to apply for and obtain New Zealand citizenship. They will not have citizenship forced upon them. It will be a matter for them to decide. Those who choose to become New Zealand citizens will, as such, have the right to remain here, the right to a New Zealand passport, and the right to come and go as they please. The position of Western Samoans who are not in New Zealand will not be changed from the previous law and practice as it was always understood to be. The Bill leaves existing arrangements to continue, subject to certain administrative modifications that I will explain later, but those Samoans who are granted permanent residence in future will be able to apply as of right for immediate New Zealand citizenship if they wish.

The effect of clause 7 is general. It is not limited to those who became citizens in terms of the judicial committee's decision. Thus, it recognises more amply than before the special relationship between Western Samoa and New Zealand to which, I can assure the House, the Samoans themselves attach great importance. In other words, we have taken the opportunity to move beyond the decision itself and respond in a generous and positive fashion.

There is another group of people whose situation needs to be covered, and they are dealt with in clause 8. Over the years a number of Samoan overstayers have been deported from New Zealand; there have been 753 since 1968. Having been deported, they became prohibited immigrants for the future. In terms of the Lesa decision, their convictions and deportations became invalid, and they could apply for a rehearing of the original charge, which, if granted—as it probably would be—would result in the charge being dismissed. To revive those convictions by legislation would, in our view, be wrong. Clause 8, therefore, quashes the convictions of those affected—while protecting all those who have acted in good faith on the basis of what was thought to be the law—and removes their status as prohibited immigrants. It does not give them a preferential right to return, but does enable them to apply for entry to New Zealand on an equal footing to others. I stress, however, that this does not extend to persons who have been deported as a result of a conviction for offences against the ordinary criminal law. They are, and will remain, prohibited immigrants.

By itself, clause 8 would discriminate against Samoan overstayers who left voluntarily without being deported. They should not be worse off than the deportees. There is no legal bar to their re-entry, and the Bill does not deal with them. They have, however, been put on an administrative list of persons who were effectively denied re-entry to New Zealand for a period of up to 5 years. That list will be discontinued.

Clause 9 is a technical and ancillary clause taken from the Citizenship Act 1977 and dealing with the establishment of parentage. I do not think I need to go into it in detail. It is needed because the Bill is self-contained and is not an amendment to our Citizenship Act. Clause 10 declares that the Act is in force in Tokelau.

I emphasise that the proposed New Zealand legislation will not have the intention or the effect of taking away rights previously exercised by anyone. On the contrary, it will accord to a large number of Western Samoans—those currently in New Zealand and those accepted for permanent residence in the future—a right that generally no one had previously believed they possessed, and which certainly they had never exercised. The effect of the legislation will also be to achieve a result that all concerned assumed had been accomplished when Western Samoa became independent in 1962—that is, the exchange by the inhabitants of Western Samoa of their previous status for the status of citizens of the sovereign independent State of Western Samoa.

I am certain that the agreement that has been reached was made possible only because of the close and effective relationship that has developed between New Zealand and Western Samoa since 1962. As I said at the signing ceremony, the protocol is in fact an indication of the maturity of that relationship. More fully than before, we in New Zealand have recognised our special relationship with Western Samoa. While I certainly cannot pretend to speak for the Government and people of Samoa, I found it gratifying that Samoans might have been eager to accept the additional status of New Zealand citizens that we, so to speak, thrust on them. There are few former dependent territories in the world where a similar decision might have been welcomed in that way. Plainly, the Samoan people value their association with New Zealand. It is up to us to see that we also value that

association and live in accordance with its implications. It is in this spirit that I commend the Bill to the House.

Mr SPEAKER: It is not a money Bill.

Mr LANGE (Deputy Leader of the Opposition): Labour Opposition members will allow the Bill to be introduced, and we will put forward only a few speakers, because we believe the Bill should now be considered earnestly in an unrushed way by the appropriate committee. We know that, throughout the world, legislation on such issues has been a source of vast political capital to those who seek to assert all kinds of views of mankind that are alien to the New Zealand way of life. Since I came back from Western Samoa I have received all kinds of messages, some asking "Why are you working to get 45 000 people into this country?", and others asking "Why did you go there to work with the Government in a plot to exclude Samoans on racial grounds?".

Such issues excite bigotry on all sides, but we will not embark on it in the House today. Instead, we will pay tribute to the commitment, the fire—and, I think, the optimism beyond what most lawyers thought might be a matter for optimism—of those who assisted Miss Lesa to get to the Privy Council, because the result of the committee's efforts was extraordinary. The case would have been ridiculed by most people within the New Zealand legal system, and, indeed, was dismissed in a somewhat cursory fashion by the Court of Appeal. But those people strove, and now, probably for the first time anywhere in the world, a Bill is before a Parliament to declare a person—in this case Miss Lesa—to be, and always to have been, a New Zealand citizen, making it a landmark for that committee and something different for the rest.

The purpose of the trip to Apia was not, as the Attorney-General was fair enough not to claim, to enable the Government to join the Opposition in negotiations with another country. The negotiations were between two sovereign States. I regret that two key people in Western Samoa's political life were indisposed at the time—the head of State, and Va'ai Kolone, the Prime Minister. But let no one misunderstand the nature of Western Samoan politics. A week in politics here might seem a long time, but an hour in Apia can be an eternity, and there is extraordinary skill, persuasive quality, and creative intrigue in Western Samoan political life. The protocol was signed as a result of the negotiation by the New Zealand Government. I had the pleasure of sitting next to the Attorney-General with earplugs on for 5½ hours on Friday morning as we travelled to Samoa in a Hercules aircraft. I was not present while the negotiations took place, but I want to say that they took place properly between the Government representatives.

Before we went, the leaders of the New Zealand political parties considered and determined the range of options. No Government member would claim that the Labour caucus has at any stage considered the detail now before the House. As is well known, I did not see the protocol until it was signed. That was proper, and I make no complaint. That negotiation took place with the Government. We came back to New Zealand, and I saw a copy of the Bill at 2.20 p.m. today. The Attorney-General was good enough to make it available at the first opportunity. There is some feeling in Western Samoa, as, indeed, the Attorney-General would acknowledge. That is not surprising in a country of such political ferment, with other constitutional issues on the back-burner—and others will refer to that. Some of those comments will be relevant, but some might be made from a sense of political grievance.

I had the pleasure of meeting Tupuola Efi who, for 6 years, was a towering figure in Western Samoan politics, and who, given his years and the nature of political life, is likely at some time to be able again to attend functions representing his country. He came to the responsible position, as he put it, that the Privy Council decision could not be allowed to go absolutely unmodified, but he would put a different slant on what should happen thereafter. That is for him to say within the context of politics in Western Samoa. I simply report gladly to the House that there was enduring good will towards New Zealand from politicians both for and against the Government. I think that is because Western Samoan politicans realised that the legislation was about citizenship, and not immigration.

I put that as firmly as I could: the Bill is about citizenship, not immigration. We can have a citizenship regime that denies New Zealand citizenship to no Australian, but says "You can all live here." We can do with immigration what we will, but in relation to Western Samoa we are dealing with citizenship, which, if it were honoured in terms of the Privy

Council decision, would do away with the immigration arguments entirely, because Western Samoans could live here as citizens of New Zealand. So the Privy Council decision is a heaven-sent opportunity for New Zealand to examine its immigration policy, because that is where the whole gripe and twist is. There is a quota, which is mentioned in the protocol. Has it been filled by new migrants to New Zealand in the past 5 years?

Hon. A. G. Malcolm: Yes.

Mr LANGE: The Minister knows that he himself has disclosed, in answers in the House, that it was filled by letting people in favour of whom he had justly exercised his discretion under section 20A of the Immigration Act remain in New Zealand. They were not new migrants. Would New Zealand be flooded if there were a quota allowing for a vast number of people who must have a written guarantee of employment and accommodation? Clearly it would not. We ought to decide now what we mean about treating a nation as an equal. I have relatives in the United Kingdom who could get on a plane, come out here, and get a 6-month visitor's permit. People in New Zealand have relatives in Western Samoa who join a queue and get a 30-day visitor's permit. It would cost them an average of about 1 year's income for the return fare, but it would cost my relatives about 3½ weeks' income at the special Air New Zealand introductory rate. Those are the issues we should be wrestling with now. New Zealand has a duty to determine by law those who ought to be regarded as New Zealand citizens, and we are seeking to assert that right by such a measure as this, although the fine detail certainly must be examined at length.

The second question—which this legislation, and all the negotiations, I believe, have left substantially unresolved—is: what is to be done about a subsequent immigration policy? The administrative list was mentioned. That is an administrative abomination. Under that list, people are fingered not just because they did not leave in time, or because they were pushed out, but because they are the relatives of those who engaged in that kind of activity. That is a disgrace. It is an affront to me as a New Zealander that such administration exists, and I am delighted that the Government has pledged that it will go.

Much has been said about the Labour Party's position, usually by those seeking to push Labour members into the position they would have us in. I say on behalf of my colleagues that the Labour Opposition lays claim to a proud heritage in its association with the Samoan people. It was Peter Fraser who, while the first Labour Government was changing the face of New Zealand society, dispatched Ministers to set in train political initiatives that were to flower in the recognition of the independent State of Western Samoa.

After lunch yesterday afternoon I caught a cab to a hospital where a forebear of mine had been a medical superintendent 50 years ago. I went to a village where I saw a person I had acted for when she was deported some years ago. In a sense, I atoned as best I could, not merely for my ineptitude in not taking her case to the Privy Council so long ago, but for not being able to tell her that she would get priority in the queue.

I thought then of the things that would be said here, and remembered the people to whom I had spoken during the previous 3 days. I went to a little place near Vaimoso and saw the building where the Mau gathered, which some may have seen in photographs of the period. I realised what it was to be a New Zealand citizen, and I reflected on days when the forebears of some of those who are now talking in terms of New Zealand citizenship gave away fortune, and in some cases life, so that they would never be labelled New Zealand citizens. I thought what a curious world it is when things go full circle, so that I am now hearing people assert New Zealand citizenship. Then I reflected that perhaps that was a shorthand plea for a just immigration policy that respects true principles of family reunification, actually recognises the special relationship whereby people can come to New Zealand to work, and says to the people of Western Samoa that there is a long-standing relationship whereby Western Samoan leaders have come to New Zealand for education, and we want to make sure that that relationship is carried on.

I believe that that is the challenge for the Government, and I am confident that the Government is sufficiently aware to begin doing justice to it. I compliment those Government members who might have been tempted, when the Privy Council decision came out, to smash down with legislation that would "do people over" tremendously. That did not happen. Members who have read what the Samoan people are saying about the process realise that those people are grateful, too. I want the Government to capitalise on that good will, and not use the House to speed through legislation that should be the subject of

consultation in the Pacific way, about which the Prime Minister recently spoke. I submit that this is not an overwhelmingly urgent, cataclysmic event that must be averted by the end of the week. We know that it is physically impossible for a migration to take place. New Zealand needs that kind of conciliation. People in my electorate and in the electorates of my colleagues will rejoice today, because the fear will go out of their lives: people in Samoa will be sad, because the dream that the Law Lords gave them a few weeks ago will evaporate through the process of legislation. As a nation, we must now reconcile ourselves to what we mean by immigration, and we must communicate to Western Samoa the assurance that we are, in the end, determined to treat that nation as an equal, and not to relegate it to a subordinate position as we have in the past.

Rt. Hon. R. D. MULDOON (Prime Minister): While I agree with most of what the Deputy Leader of the Opposition said, I disagree with the note on which he closed his address. It has not been part of the Government's thinking, or, I believe, of that of our predecessors in earlier National Governments, that Western Samoa should be regarded as some kind of inferior, let alone subordinate, nation. That has never been the case to my knowledge and in my experience during the past 20 years in which I have been in the House, and it is not the case now.

I express my appreciation of the manner in which the Prime Minister of Western Samoa, Va'ai Kolone, met his responsibility in this matter. He said publicly—and I can assume that he was speaking for this Government—that he was perfectly happy to let the Privy Council decision stand. He told me he did not believe there would be a flood of his people to New Zealand, but he recognised the problem, and, contrary to some reports, we discussed it carefully and in a relaxed manner, with no ultimatums being given and no time limits being set. We talked the problem through; and he decided to ask his Government to agree to what the New Zealand Government saw as the best solution.

The Attorney-General has outlined the matter in great detail, so I do not propose to repeat it. The New Zealand Government had four options: to do nothing; to permit a class of New Zealand citizens to be denied access to the country of which they were citizens; to reverse totally the decision of the Privy Council; or to do something similar to what we are doing now. The Prime Minister of Western Samoa, and his officials who were with him in Wellington, thought that the Government's proposal would be agreed to, and that it was the best solution.

If the Privy Council had a better understanding of the relationships in this part of the world I do not believe that it would have come to the same decision, but that is in the past. It made its decision, and it would have held in any New Zealand court. One can argue that the decision giving New Zealand citizenship to so many—perhaps 100 000—Western Samoans would have detracted from that country's independence, and, as the Deputy Leader of the Opposition said, independence was in the very heart of the Samoan people from the very beginning, long before there was a New Zealand mandate and throughout all the years of colonisation.

Mr PREBBLE (Auckland Central): The Bill must be treated with dignity by Parliament, as it is a constitutional one. The honour of our country is at stake, and the Parliamentary Labour Party believes that the Bill must go to the Foreign Affairs Committee for very careful study. Opposition members did not see the proposals before today, and for that reason they have made no decision on the issue. No decision could be made until they had received firm proposals and could consult interested parties, particularly the Samoan people living in New Zealand, with whom, as the Deputy Leader of the Opposition rightly said, the Labour Party has had a very close and special relationship for more than 50 years.

It is appropriate, however, to record that the committee of Western Samoans who arranged the original appeal raised more than $30,000 to take the case to the Privy Council, and they are to be congratulated. The committee achieved some major breakthroughs, as the status of Western Samoans in New Zealand has been recognised, and the threat of prosecution has been removed from those who are described as overstayers. New Zealand citizenship has been gained, on application, for all Western Samoans living in New Zealand. Furthermore, the group has forced the National Government to reconsider its immigration laws and practices. For example, the banned list has been wiped. It contained the names not only of the people referred to by the Attorney-General, but of people banned from coming to New Zealand because they were related to someone who might have overstayed a permit.

The Government has reversed the education ban. These are all enormous achievements, and the Parliamentary Labour Party rejoices with the committee in its triumph. Relationships between Western Samoa and New Zealand will never be the same again. For myself, I should like to live in a world without national citizenship in which we are citizens of the world, but we do not live in such a world, and are not likely to.

Since the public announcement of the Privy Council's decision the Parliamentary Labour Party's attitude has been moulded by the following considerations. It was clear that the decision would be reversed, if only for the simple reason that the Government would not accept it. The Parliamentary Labour Party wanted to protect the position of Western Samoans living in New Zealand—our people. It wanted the New Zealand Government to talk to the Western Samoan Government and reach an agreement, rather than to take unilateral action. I am pleased to say that the Government has done that. The Parliamentary Labour Party wanted the agreement to be fair and workable, and one with which Parliament and the nation could live with honour and integrity. Those are all matters that the Foreign Affairs Committee must carefully examine to ensure that the agreement lives up to those principles.

It is appropriate to record that if New Zealand had a humane immigration policy this problem would never have occurred. If the Parliamentary Labour Party's views on Privy Council court cases—a colonial relic—had been followed, this would not have happened. The fine print of the agreement, which is also contained in the letters of understanding between the Governments, must be examined by the Foreign Affairs Committee to see if we have reformed our immigration practices sufficiently. It would also be appropriate for us to take this opportunity to try to establish a new and better relationship. While we are wiping the names of Western Samoan overstayers from the book, surely it would be fitting to consider doing something for Tonga and Fiji in order to establish a better relationship between ourselves and the people with whom we share the Pacific.

The view of some that a large number of Western Samoans would have come to New Zealand is surely an indictment of the way that we, as a Parliament, administered that country for many years, and we should consider whether the aid we are giving to Western Samoa, as well as other assistance, is sufficient. I am pleased that the Government did not make such an offer in order to get an agreement, because it would have been an insult to the honour of the Western Samoans, but now that we have such a protocol it is appropriate that we should consider the question.

Rt. Hon. R. D. MULDOON (Prime Minister): I get the impression that the position adopted publicly by the member for Auckland Central immediately after the announcement of the Privy Council's decision has changed somewhat. However, that is his affair. I can only conclude that some statements reported from Western Samoa were made in the political atmosphere of that country. I do not criticise those who made them for that purpose. One gentleman there used the term "racist", which was unfortunate. I am sure that all members of the House will agree that there was no element of racism in the agreement. There were other somewhat extravagant terms. We know that the position in Western Samoa is volatile at the moment, with various electoral petitions and all kinds of political possibilities. That point has to be made, because some New Zealanders reading those comments may take an unfair interpretation from them.

The Deputy Leader of the Opposition raised the matter of the quota, and of access to New Zealand by people who simply wish to visit. We all know why the term for visits has been shortened in recent years, but I must make the point that the migration quota for Western Samoa covers people who may be totally unskilled. With the exception of residents of Australia, and, of course, the Cook Islands and Niue, which have a special relationship with New Zealand, we do not permit unskilled people to come to New Zealand as permanent residents, even from Britain. The Government has taken the view that this is something that it can do for Western Samoa. It can take its people under certain conditions, through a quota, even though they may be unskilled. I have often said, when discussing our immigration policy in other countries, that the Pacific is the one source from which we do take unskilled people—the Cook Islands, Niue, and, indeed, Western Samoa. When the term "just immigration system" is used, I have to reply by saying that there is an element of

justice that comes from the close, friendly relationship between New Zealand and Western Samoa in the sense I have just expressed.

The question of timing for the Bill has been mentioned. I do not think we should hurry it. We did not hurry the discussions with the Prime Minister of Western Samoa. The discussions were given all the time needed by both Governments. On the other hand, unfortunately, there is a kind of interregnum, in that we are holding up the ordinary passage of many Western Samoans in the meantime. That is the only reason we should facilitate the passage of the Bill, given whatever scrutiny might be required.

Mr O'FLYNN (Island Bay): I want to repeat something that the member for Auckland Central said at the very beginning of his speech. I make it quite clear that it is not correct, as suggested in Friday's *Dominion*, that the Labour Party was in agreement with the proposal as it was then understood. I repeat quite carefully that the Labour Opposition made no decision on this matter at its caucus meeting on Thursday morning; nor is it correct that the Labour Opposition had all the details before it to enable it to do so, if it had wished.

I shall devote only a sentence to the second matter, because the member for Auckland Central dealt with the point. The earnest group of litigants whose efforts led to the decision of the Privy Council should be warmly congratulated—even if the results of the decision are thought by some people to be wrong and are to be reversed by the Bill—on having at least brought about some changes in the immigration policy beneficial to themselves and to those in the community they represent.

To elaborate a little on what the Deputy Leader of the Opposition said, it is appropriate to recall the very long and beneficial association that the New Zealand Labour Party has had with the people of Western Samoa. Mr Bruce Brown—now a distinguished member of the Ministry of Foreign Affairs—has written a book about the rise of the New Zealand Labour Party. On pages 126 and 127 it recounts an incident in the 1930s. I see that the Prime Minister is smiling. He was right to distinguish between his Government and its nationalist predecessors, and some of the earlier Governments of New Zealand. I am alluding to the incident when the New Zealand Labour Party of the 1930s publicly dissociated itself from the conduct of the Government of New Zealand at that time, which was resisting, by arms, some of the nationalist movements in Western Samoa. The New Zealand Labour Party has always been concerned with the welfare of the Samoan people, and it was for that reason that the first Labour Government, in its very first month in office, sent a ministerial delegation to Western Samoa to assure the Samoans that New Zealand was then under new and better management. Indeed, it was.

As the Deputy Leader of the Opposition said, the Labour Opposition will not oppose the introduction of the Bill. I am very glad that the Prime Minister has assured the House that Parliament will not legislate in a hasty way. Rumours were going around that the Bill would be pressed ahead with speedily. I am glad to understand that that is not so. I hope that the Bill will be considered in an unrushed way by the Foreign Affairs Committee, because I am bound to say that until now—and I am not questioning the Prime Minister's comment that there is no need for ultimatums or timetables—events have moved very fast indeed.

The South Pacific Forum finished on about 9 August. Discussions with Mr Kolone were held in New Zealand in the following week. He was still conducting discussions with his communities in New Zealand on Sunday of the week before last—15 August. Answers were then asked for and obtained by Wednesday of last week—18 August—for putting before the caucuses next day. On Friday a parliamentary delegation went to Western Samoa to deal with the matter. The protocol was signed on Sunday, New Zealand time.

It was fascinating that the Attorney-General should say that, instead of instant legislation, New Zealand had chosen to seek a solution by this form of agreement. It is good that there was an agreement, but only barely can the legislation be said to be not instant. The matter has proceeded with the greatest possible speed, in circumstances that have given rise to a great deal of criticism both in New Zealand and overseas—and that is not surprising. I am sure that the Western Samoan Government did its best to deal with the matter responsibly in the time it had available, but it is not surprising that the criticism is surfacing. There was comment in the weekend papers on the limited amount of publicity that it had been possible to give to the matter in Western Samoa, and to the questions that were being raised.

Hon. J. K. McLAY (Attorney-General): I was interested to hear about the book *The Rise of New Zealand Labour*. Perhaps Bruce Brown could now be brought back to New Zealand to write the other half. In the process he might also write something about the actions of the New Zealand Government towards the Cook Islands when the Labour Party was in office, because its actions during that period were certainly not necessarily covered with glory.

The member for Island Bay said that the Labour Opposition had not adopted a position on the proposal at its caucus meeting last Thursday. I have to say that the Prime Minister was under the very clear impression that the Leader of the Opposition had told him that the Labour Opposition caucus had agreed to the broad outline of the proposals. But be that as it may, the Labour Opposition has now indicated that it will not object to the Bill's being introduced, and will certainly co-operate in its passage.

The real question has to do with the timing of the Bill. I agree with those who have said that we should not legislate in haste on the issue, but at the same time we must remember that normal immigration and passport procedures at the Apia office of the New Zealand High Commission cannot resume until the Bill has been passed and the instruments of ratification have been exchanged between the two Governments. So I urge the select committee and the House, in considering the appropriate timing for the Bill, to bear in mind the people in Western Samoa who seek to come to New Zealand under the ordinary immigration policies and arrangements that prevailed before 19 July, and the fact that those procedures cannot be resumed until the House acts, and the two Governments exchange the instruments of ratification. I am sure the House will want the position to be brought back to normal at the earliest opportunity. The intention of the Bill is to facilitate that very purpose. I commend it to the House.

Bill introduced and read a first time.

Hon. J. K. McLAY: I move, *That the Citizenship (Western Samoa) Bill be referred to the Foreign Affairs Committee, and that the proceedings of the committee during the hearing of evidence be open to accredited representatives of the news media.*

Motion agreed to.

The following statement was issued by the Human Rights Commission on 2 September 1982:

The Human Rights Commission considers that the Citizenship (Western Samoan) Bill involves a denial of basic human rights in that it seeks to deprive a particular group of New Zealanders of their citizenship on the basis that they are Polynesians of Samoan descent.

The issues raised concerned the human rights of New Zealanders. The Commission is making this statement in accordance with its statutory function to make statements on any matter affecting human rights.

Most of those affected by the Bill are now, and have been since birth, entitled to citizenship by virtue of an Act of the New Zealand Parliament. The fact that people were unaware of their rights is no reason to take them away.

The present Bill is taking citizenship away from a group of people who are defined as being born in Western Samoa, or who are entitled to citizenship through such people. The Samoans affected have been citizens of New Zealand since birth by virtue of legislation passed by Parliament in 1928, that according to New Zealand's highest Court meant "a person born or resident in Western Samoa is to be treated in the same manner in all respects for all purposes of the Act of 1928 as if he had been born or resident in New Zealand proper."

The Bill as it stands has an unfortunate racist implication. Dual citizenship is not unknown, and applies to many New Zealanders. For instance a child born in New Zealand and having a Dutch father apparantly would have dual citizenship. There is no reason in principle therefore to take New Zealand citizenship away from that group of citizens who are also Samoan nationals. This is a deprivation that is based on racial grounds. If dual citizenship raises constitutional and practical difficulties then these should be dealt with on a basis applicable to all and not just to Western Samoans.

There appears to be a confusion between the principle of citizenship rights and the practical consequences of large-scale entry of people from Western Samoa. This latter which is no more than an assumption, can and should be resolved without prejudicing the constitutional rights of New Zealanders in general, much less of a group of them distinguished by their race.

The Protocol to which the Act seeks to give effect is open to criticism insofar as it is understood to imply that a foreign government can give validity to an Act of the New Zealand Legislature in depriving New Zealanders of their rights. The agreement or otherwise of a foreign government is of no constitutional relevance in such a situation.

These considerations have particular force in light of the International Human Rights Covenants that New Zealand has ratified. For instance Article 12 of The International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of the right to enter his own country.

Article 1 of the Convention on the Elimination of all Forms of Racial Discrimination dealing with citizenship provides that there shall be no discrimination against any particular nationality. Article 5 of the same Convention contains a guarantee for all citizens regardless of race, colour or national origin, of the right to residence within, and the right to leave or return to one's country.

For these reasons the Commission is concerned about the Bill and believes that the issues should be reconsidered.

6 September 1982

The Chairman,
Foreign Affairs Committee.

CITIZENSHIP (WESTERN SAMOA) BILL

1. The Ministry of Foreign Affairs has been asked to comment on the public statement about the Bill issued by the Human Rights Commission on Thursday, 2 September. That statement asserts that there is no reason, in principle, to take New Zealand citizenship away from a group of citizens who are also Samoan nationals; it suggests that the Bill involves a breach of international legal obligations under treaties which relate to human rights and which are binding on New Zealand; it says that the Bill has racist implications; and it proposes an alternative course of action for consideration.

2. In the Ministry's view criticism of the kind levelled at the Bill by the Human Rights Commission fails to take account of the relevant background of international law and practice.

3. International law and the conduct of international relations are based upon the concept of the state which has responsibility for a defined territory and a defined population. The emergence of a new state implies a redrawing not only of physical boundaries but also of national allegiances. Thus, prior to Western Samoa's attainment of independence in 1962, it passed legislation to create its own citizenship and New Zealand took the only complementary action then thought to be necessary — that is, the repeal of the legislation under which Western Samoans had been recognised as New Zealand protected persons.

4. It was not believed that anyone had become a New Zealand citizen by reason only of birth in Western Samoa. Indeed, it would have been contrary to the policy of the League of Nations, and to New Zealand's own policy as mandatory, for the people of a mandated territory to be merged in the national status of the administering power. There is ample evidence on record that neither the New Zealand Government, nor the Western Samoan Government at the time of independence, believed that such a merger had occurred or would have wished it to continue.

5. It is of course true that dual citizenship does occur — usually through naturalisation, or marriage to an alien, or birth in a country of which parents are not nationals. In any such case there is a basis for holding that the person concerned has a real connection with more than one country. The Bill now under consideration takes account of this; it does not take away the New Zealand citizenship of any person having such a connection with this country.

6. The Privy Council decision has, for the first time, disclosed that New Zealand statute law is not in harmony with the principles and policies that have just been outlined. In the result New Zealand citizenship has been held to extend to a large class of Western Samoan citizens who have no other connection with New Zealand than their birth in Western Samoa or their descent from a person born in Western Samoa. The purpose of the Bill is to correct that legislative anomaly, which in no way reflects an obligation owed by New Zealand, either under the general principles of international law, or under the law relating to human rights.

7. This last statement may be amplified in a number of ways. As already noted, the duties that international law imposes upon states relate to the territory and people for which ease is responsible; and this responsibility was automatically varied when the people of Western Samoa achieved independence and established their own citizenship. The treaties to which the statement of the Human Rights Commission refers place no restriction upon the transfer to a newly independent state of responsibility for the territory and citizens that belong to that state.

8. As has also been noted, it would have been contrary to both the letter and spirit of New Zealand's obligations as an administering power to treat sections of the Western Samoan population as an increment to New Zealand's own population.

9. For these reasons, the scope of New Zealand's international obligations including those relating to human rights does not extend to a segment of the population of another independent state having the citizenship of that state and no real connection with New Zealand. If the anomaly in New Zealand's domestic law disclosed by the Privy Council decision were allowed to determine the extent of New Zealand's international responsibility, there would be no way of discharging the additional obligations we had unilaterally assumed. This is so because New Zealand's authority does not extend to Western Samoan citizens unless they are in New Zealand or have a substantial connection with New Zealand.

10. If New Zealand were to adopt the course of action which the Human Rights Commission has suggested — that is to maintain the Privy Council's decision but to make a distinction between classes of New Zealand citizens in terms of their freedom to enter New Zealand — that could well be regarded as a discriminatory measure, incompatible with New Zealand's obligations under the International Covenant on Civil and Political Rights.

11. Finally, the foregoing should provide some reassurance to those, including the Human Rights Commission, who are concerned that the Bill may be regarded as having a racist character. The separation of New Zealand and Western Samoan citizenship (which because of an unexpected Court decision has had to be undertaken now rather than 20 years ago) proceeds from exactly the same premises as those which governed the 1948 legislation separating the citizenship of New Zealand and of other "Old Commonwealth" countries from that of the U.K. In each case, the changes made were the inevitable consequence of the emergence of fully independent states; the later case is no more racist than was the earlier.

(M. Norrish)
Secretary of Foreign Affairs

The following report from Hon. P.I. Wilkinson was made in Parliament on 8 September 1982. (A full text of the debate can be found in Hansard Parliamentary Debate No. 24, 1982).

CITIZENSHIP (WESTERN SAMOA) BILL

Report of Foreign Affairs Committee

Hon. P. I. WILKINSON (Kaipara): I am directed to report that the Foreign Affairs Committee has carefully considered the Citizenship (Western Samoa) Bill, and recommends that it be allowed to proceed as amended. The committee adds the following rider: "That the committee draws to the attention of the Government the alleged difficulties and anomalies concerning immigration from Western Samoa to New Zealand as discussed in the submissions before the committee". I move, *That the report do lie upon the table.*

The purpose of the Bill, and the background to it, are familiar to all members and need no elaboration now. In the light of the Privy Council decision it was decided by the Government that normal immigration procedures from Apia should be suspended temporarily until a satisfactory long-term solution could be agreed upon between the two Governments. The protocol represents that agreed solution, and it is important, therefore, that legislation should be passed as soon as possible to give effect to the protocol so that normal immigration procedures can be restored. To quantify the present problem, if we exclude the special case of the Samoan football team, the overall entry traffic has dropped by about 60 percent compared with the level in the 6 weeks immediately preceding the Privy Council decision.

The committee was forced to meet for a more concentrated period than is usual, and to give little notice for the calling of submissions. None the less, the committee received 60 written submissions as well as a number of unsupported oral submissions. It met for three full days, with 24 hours being taken up in the hearing of submissions—the equivalent of several weeks of normal committee work. The first day was set aside for hearing submissions from representatives of the Samoan community, and the interest of that community was reflected in the huge turnout—possibly the largest ever before a select committee of the House. Committee members heard some impressive and well-thought-through submissions—proof that in the time available people could prepare and present their case very effectively.

I should like again to express my particular thanks to Mr Puni Raea for the way he co-ordinated the presentation of those submissions, which contributed to an important degree to the success of a major exercise in participatory democracy. People were encouraged to address the committee in the language and manner of their preference. As far as possible we did it the Pacific way, and I am sure that no one present on that first day could claim that proceedings were rushed. On a personal level I thank three of the leading participants: Mr Puni Raea and Miss Louisa Crawley for their gracious appreciation of the conduct of the proceedings, and Mrs Tala Cleverley for expressing approval at the start of the arrangements for the meeting.

The third day of hearing arose from serious assertions made in a public statement issued by the Human Rights Commission, which suggested that the Bill might involve a breach of New Zealand's international obligations under a number of human rights treaties to which New Zealand is a party. The commission's statement also said that the Bill had "unfortunate racist implications". In view of the gravity of those assertions, and the special statutory position of the Human Rights Commission, the committee believed it should hear from the commission, which had not presented any submissions to it, and the hearing took place yesterday. The committee took advice from other quarters on the points raised by the commission. Having questioned the human rights commissioners, the committee is firmly of the view that the criticism failed to take account, among other things, of the relevant background of international law to the protocol and to the Bill.

The major considerations as I see them were as follows. Under the League of Nations mandate it was expected—and New Zealand gave the league such assurance—that as a mandatary power it would not seek to impose its citizenship on the inhabitants of the mandated territory. Moreover, it has always been the understanding of the New Zealand and Western Samoan Governments that Western Samoans did not have New Zealand citizenship. Had it been realised in 1961 that Western Samoans did have New Zealand citizenship, undoubtedly it would have been decided that, upon independence, the inhabitants of Western Samoa should cease to hold such citizenship, as was the case in 1948 when New Zealand citizenship was separated from that of the United Kingdom.

As to the statement that the Bill had "unfortunate racist implications", the committee—and I believe I speak for every member—is of the view that this statement has no foundation, and at least one of the members of the commission conceded that the words were an unfortunate choice. "Unfortunate" is indeed the right word. As the *Dominon* leader article this morning points out, the reference "certainly gave us the impression that the commission itself saw these implications, and was not merely reporting on how the Bill might be seen by others". We are entitled to expect the commission to use the word "racist" with extreme care, and only after considered judgment. This is important at all times, but even more so at a time such as this when, in the wake of the Privy Council decision, racial feelings are inflamed—a fact to which I alluded in the House on Friday morning. We might well ask how we can expect the community to "cool it" if those in authority do not set an example.

As a result of its deliberations the committee has decided to make a number of amendments to the Bill, and I draw the attention of members to clauses 1, 4, 5, 6, 7, and 9. Time allows me to point out only the more significant provisions. A new subclause (2) to clause 1 is added to ensure that the protocol and the Bill come into force on the same day. Clause 4(2) is amended, because some Western Samoans covered by the Privy Council decision qualify for New Zealand citizenship under more than one classification, and the clause as proposed originally was stated only in alternatives.

A policy change is contained in a new subclause (3) to clause 4. Under the Passports Act 1980, a New Zealand citizen has the right to a New Zealand passport and the Department of Internal Affairs has no discretion to refuse to issue one. A number of people have applied already for New Zealand passports as a result of the Privy Council decision. These applications have been, and are being, processed in the normal manner, and a number of passports have been issued already. The amendment ensures that such people retain their New Zealand citizenship. The amendment to clause 7 is to ensure that the Bill reflects the wording of the protocol—that people covered by the clause have the right to become New Zealand citizens immediately upon application. In addition, the words "Was in New Zealand at any time on the day before the date of the commencement of this Act" have been substituted so that people are not faced with a difficult situation of proof.

Clause 9 was intended to pick up all those relying on their rights by descent. It was thought to be deficient because it did not provide for presumption in favour of legitimacy for a child born in marriage. That is now amended accordingly. The committee has added a new clause 9(1), and the amendment will have the effect that identical reasons for the deprivation of citizenship will apply to citizenship granted under this Bill and the Citizenship Act 1977.

In my opening remarks at the hearings in the Legislative Chamber last Tuesday I said, "Finally, no one should fear that less care and concern will be given by this committee to this Bill because of the need to concentrate our hearings. Our aim is to ensure that the fairest, most workable legislation possible is achieved, legislation with which we can live with honour." At the end of the exercise, I believe we can fairly claim to have met our objectives.

CITIZENSHIP (WESTERN SAMOA) ACT

(Reproduced in full)

ANALYSIS

1982, No. 11

An Act to implement the Protocol done at Apia on the 21st day of August 1982 to the Treaty of Friendship between the Government of New Zealand and the Government of Western Samoa done at Apia on the 1st day of August 1962, and to make provision relating to the New Zealand citizenship of certain persons born in Western Samoa before 1949 and others claiming by descent or marriage through such persons

[*14 September 1982*

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Citizenship (Western Samoa) Act 1982.

(2) This Act shall come into force on the 15th day of September 1982.

2. Interpretation—In this Act the term "New Zealand" does not include the Cook Islands, Niue, or Tokelau.

3. Crown bound—This Act binds the Crown.

4. Application—(1) Subject to subsections (2) and (3) of this section but without limiting section 7 (1) (a) of this Act, this Act applies to—

(a) Every person—

(i) Who was born in Western Samoa on or after the 13th day of May 1924 and before the 1st day of January 1949; and

(ii) Who, immediately before the 1st day of January 1949, was a British subject by virtue only of having been born in that country; and

(b) Every female who, on the 1st day of January 1949, became a New Zealand citizen by virtue only of having been married to any person to whom paragraph (a) of this subsection applies; and

(c) Every person—

(i) Who is the descendant of a person who was born in Western Samoa on or after the 13th day of May 1924 and before the 1st day of January 1949; and

(ii) Who was born before the 1st day of January 1949; and

(iii) Who was a British subject immediately before the 1st day of January 1949; and

(d) Every female who, on the 1st day of January 1949, became a New Zealand citizen by virtue only of having been married to any person to whom paragraph (c) of this subsection applies; and

(e) Every person—

(i) Who is the descendant of any person to whom any one or more of paragraphs (a) to (d) of this subsection applies; and

(ii) Who was or is born on or after the 1st day of January 1949.

(2) This Act does not apply to any person who is a New Zealand citizen otherwise than by virtue only of being a person to whom any one or more of paragraphs (a) to (e) of subsection (1) of this section applies.

(3) This Act, except section 8, does not apply to any person to whom a New Zealand passport has been properly issued before the commencement of this Act in accordance with the Passports Act 1980.

5. Certain person declared to be New Zealand citizen—Falema'i Lesa of Wellington (being the petitioner in the case of *Lesa* v *The Attorney-General of New Zealand*, argued

before the Judicial Committee of the Privy Council in London in July 1982) is hereby declared to be a New Zealand citizen otherwise than by descent.

6. Persons to whom this Act applies not New Zealand citizens—Notwithstanding anything in the Citizenship Act 1977 or in any other enactment but subject to section 5 of this Act, every person to whom this Act applies shall be deemed never to have been a New Zealand citizen, and no such person shall be a New Zealand citizen unless the Minister of Internal Affairs authorises the grant of such citizenship to that person under section 7 of this Act or any of sections 8 to 10 of the Citizenship Act 1977.

7. Grant of citizenship as of right in certain cases—(1) Notwithstanding anything in section 8 or section 9 of the Citizenship Act 1977, the Minister of Internal Affairs shall, upon application made to him, immediately authorise the grant of New Zealand citizenship to any person who proves to the satisfaction of the Minister—

(a) That he is a citizen of Western Samoa or a person to whom this Act applies; and

(b) That he—

(i) Was in New Zealand at any time on the day before the date of the commencement of this Act; or

(ii) Has lawfully entered New Zealand after the commencement of this Act and is entitled, in terms of the Immigration Act 1964, to reside in New Zealand permanently.

(2) Sections 11, 12, 27, and 28 of the Citizenship Act 1977, and any regulations made under that Act, shall apply with any necessary modifications in respect of an application under subsection (1) of this section as if it were an application under section 10 of that Act.

8. Certain convictions quashed—(1) Where any person to whom this Act applies has been convicted, at any time before the commencement of this Act, of an offence against section 5 (1) (a) of the Immigration Act 1964 or any of the provisions of Part II (except section 19A) of that Act, or any corresponding former enactment, that conviction is hereby quashed.

(2) No person to whom this Act applies shall be a prohibited immigrant for the purposes of the Immigration

Act 1964 merely because he has been deported from New Zealand consequent upon his conviction of any offence to which subsection (1) of this section applies.

(3) Without limiting or affecting any privilege, immunity, defence, or justification conferred by any other enactment or rule of law, no person shall be guilty of an offence or liable to any civil proceeding by reason of anything done in good faith to or in respect of any person to whom this Act applies in relation to or arising out of any matter referred to in subsection (1) of this section.

9. Special provisions relating to parentage—(1) For the purposes of determining whether any person is or is not a person to whom this Act applies,—

(a) A person shall, in the absence of evidence to the contrary, be presumed to be the father of another person if he is or was married to that other person's mother at the time of that other person's conception or birth:

(b) Every person whose parents married each other subsequent to his birth but before the 1st day of January 1978 shall be treated as if his parents had been married to each other at the time of his birth.

(2) Without limiting subsection (1) of this section, for the purposes of determining whether any person, other than a person who was born outside Western Samoa before the 1st day of January 1949, is or is not a person to whom this Act applies,—

(a) A person shall, in the absence of evidence to the contrary, be presumed to be the father of another person if his paternity of that other person has been established by one or more of the types of evidence specified by section 8 of the Status of Children Act 1969; and the term "father" shall be construed accordingly:

(b) A person shall be deemed to be the child of another person if he has been adopted by that other person, either by an adoption order within the meaning of and made under the Adoption Act 1955 or by an adoption to which section 17 of that Act applies; and—

(i) The terms "father", "mother", and "parent" shall be construed accordingly; and

(ii) The person shall be deemed to have been born when and where the adoption order was made:

Provided that, on the discharge for any reason of the adoption order in accordance with section 20 of that Act, the person shall cease to be deemed to be the child of that other person.

(3) References to the status or description of the father or mother of a person at the time of that person's birth shall, in relation to a person born after the death of his father or mother (as the case may require), be construed as referring to the status or description of the father or mother at the time of his or her death.

(4) Where the relevant parent died before, and the person was born on or after, the 1st day of January 1949, the status or description that would have been applicable to the parent had he or she died on or after the 1st day of January 1949 shall be deemed to be the status or description applicable to him or her at the time of his or her death.

(5) Where the relevant parent died before, and the birth occurred on or after, the 1st day of January 1978, the status or description that would have been applicable to the parent had he or she died on or after that date shall be deemed to be the status or description applicable to him or her at the time of his or her death.

(6) Without limiting the foregoing provisions of this section, for the purposes of determining whether any person is or is not a person to whom this Act applies, the status of any person at any material time shall be determined in accordance with the rules of law that applied, or were subsequently deemed to have applied, at that time.

10. Citizenship Act 1977 consequentially amended—Section 17 (1) (c) of the Citizenship Act 1977 is hereby amended by adding the words "or the Citizenship (Western Samoa) Act 1982".

11. Act in force in Tokelau—This Act shall be in force in Tokelau.

This Act is administered in the Department of Internal Affairs.

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These Press Statements were released after the enactment in Parliament of the Citizenship (Western Samoa) Bill.

Press Release of 14 September 1982, by the Attorney-General, Hon. J.K. McLay

The Attorney-General, the Hon. J.K. McLay, confirmed tonight that following the enactment this afternoon of the Citizenship (Western Samoa) Bill by the New Zealand Parliament, the instruments of ratification of the Protocol to the Treaty of Friendship between New Zealand and Western Samoa were exchanged in Apia thus bringing the Protocol into force.

"The Agreement on this solution to the problem created by the Privy Council decision was made possible because of the close and co-operative relationship that has developed between New Zealand and Western Samoa since 1962," the Minister said.

"That agreement which is contained in the Protocol which has now been ratified indicates the maturity of that relationship and will, I believe, further foster the friendly relations between New Zealand and Western Samoa in the years ahead."

The Minister confirmed after consultation with the Minister of Immigration, the Hon. A.G. Malcolm, that now that the Act had become law and the Protocol had been ratified, immigration and passport procedures would immediately return to normal.

Referring to the Privy Council's decision, the Minister recalled that for sixty years no one had believed that persons of Western Samoan origin in Western Samoa were British subjects owing allegiance to the British Crown.

The Samoan Working Committee on Self Government was firmly of the view not only that on independence Samoans should have their own separate Samoan citizenship as befitted the citizens of a sovereign independent state, but also that they should not hold the citizenship of any other state.

The Citizenship of Western Samoa Ordinance of 1959 reflected this view and for the 20 years since independence the Governments and people of Western Samoa and New Zealand have proceeded upon the clear basis that Western Samoan citizenship and New Zealand citizenship were quite separate and distinct.

The Privy Council decision achieved an unintended result that was contrary to the assurance given by the New Zealand Government to the League of Nations that Samoans were not British subjects. It was contrary to the basis on which the Samoans themselves worked towards independence.

It was contrary to the general Commonwealth practice, that inhabitants of each country which became independent would cease to be citizens or protected persons of the former colonial power and would acquire their own separate citizenship.

Finally, it was contrary to the basis on which the Western Samoan and New Zealand Governments and the people of each country had conducted their affairs since Western Samoa's independence in 1962. Indeed had the New Zealand Parliament in 1982 moved to pass a law that had precisely the same effect as the Privy Council decision that would almost certainly — and very properly — have been regarded by the Government and people of Western Samoa as an unfriendly act towards a sovereign and independent state.

In view, however, of the close relationship between New Zealand and Western Samoa and because the Privy Council's decision also had implications for Western Samoa, even though it related solely to New Zealand law, the New Zealand Government has proposed consultations between the two Governments to ensure that the matter was resolved in a way which best accommodated the interests of both countries.

The result of these consultations was the signing of Protocol to the Treaty of Friendship between Western Samoa and New Zealand of 1962. That Protocol, effect to which has now been given by the Citizenship (Western Samoa) Act 1982, is based on

the principle that in accordance with international law and practice it is for each country to decide who are its citizens, and that normally a country grants citizenship only to those persons who have a close and effective link with it.

The Protocol recognised, however, that the links between New Zealand and Western Samoa are such as to justify special treatment for the citizens of Western Samoa.

The special relationship between New Zealand and Western Samoa is reflected in the central provisions of the Protocol to which effect is now given in New Zealand law.

First, all Western Samoans who are already in New Zealand have the right to become New Zealand citizens immediately. It should be noted that this right applies to all Western Samoans currently in New Zealand and not merely those who are covered by the Privy Council decision. It is also a right to become New Zealand citizens immediately, not the more limited right to permanent residence status, which carries the possibility of New Zealand citizenship after three years.

Secondly, all Western Samoans who are accepted for permanent entry to New Zealand under the quota system or who are accepted in accordance with normal immigration practice will be accorded the right to become New Zealand citizens immediately they acquire their permanent residence status. Again it should be noted that this right extends to all Western Samoans and not merely those covered by the Privy Council decision. It will also put Western Samoa in a unique and separate position justified only because of the special relationship between the two countries.

"The legislation therefore does not take away rights previously exercised by anyone," said Mr McLay. "On the contrary it accords to a large number of Western Samoans (those currently in New Zealand and those accepted for permanent residence in the future) a right which generally no-one had previously believed they possessed and which certainly they never exercised. Moreover, the legislation also achieves a result which all concerned had believed was accomplished when Western Samoa became independent in 1962 (i.e. the exchange by the inhabitants of Western Samoa of the previous status for the status of citizens of the sovereign independent state of Western Samoa)."

Press Release of 14 September by the Attorney-General, Hon. J.K. McLay

The Attorney-General, Mr McLay, expressed concern today about a recent statement by a Samoan lawyer which suggested that any Samoan covered by the Privy Council decision who made an application for a New Zealand passport at any time before the Citizenship (Western Samoa) Bill became law could not be denied a passport.

"That statement is not corfect and represents a misunderstanding of clause 4(3) of the Bill," the Minister said. "What that clause provides is that if a person applied for a New Zealand passport as a result of the Privy Council decision *and if a passport has in fact been issued* to him or her prior to the commencement of the Act then he or she will retain their New Zealand citizenship".

CITIZENSHIP (WESTERN SAMOA) BILL

Address by the Minister of Justice, the Hon. J.K. McLay, to a meeting of the Island Bay Electorate branch of the National Party in Wellington on 27 September 1982

You have asked me to speak tonight about the background to the Citizenship (Western Samoa) Bill which was passed by Parliament two weeks ago. The issue is a difficult and complex one, because it raises a variety of questions including :

(i) the history and nature of New Zealand's relationship with Western Samoa since 1914;

(ii) the circumstances under which Western Samoa came to independence in 1962;

(iii) the interpretation of an act of the New Zealand Parliament which was intended to give effect to (and in fact, annexed) an earlier United Kingdom Act of Parliament;

(iv) it also raised questions of immigration in the minds of some people and highlighted for many New Zealanders, perhaps more so than on any previous occasion, the implications of the fact that the Judicial Committee of the Privy Council is New Zealand's final appeal court.

Some of those are matters on which I don't intend to talk tonight. For instance, I do not propose to examine the question whether the Privy Council's decision was right or wrong. While it is certainly an important question and one which will properly exercise the minds of lawyers for many years to come, it is, for the purposes of this discussion, largely irrelevant. Whether right or wrong unless and until it was changed by Parliament, the decision was binding and applicable on New Zealand law and courts. Similarly I do not intend on ths occasion to examine the role of the Privy Council as New Zealand's final appellate court. That is an issue which only five years ago received the careful consideration of the Royal Commission on the Courts. In putting it to one side, I am in no way

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suggesting that it is an issue of no consequence. I simply say that it merits separate treatment, which would perhaps be more appropriate when the emotions surrounding the Lesa decision have started to fade a little.

New Zealand's Historical Relationship with Western Samoa

Western Samoa and New Zealand are Pacific nations. Each is now a sovereign and independent state. As such they have many interests in common.

Their formal relationship began on 29 August 1914 when New Zealand forces took possession of Samoa, principally for the purpose of silencing the German radio station that operated in the hills above Apia. Following the first World War, New Zealand administered the territory under a League of Nations mandate. The League clearly regarded a mandated territory as being very different in concept from a colony (even though the administering countries often had different and more "traditional" ideas). Particularly the League never intended that those people who lived within the mandated territory should become citizens of the administering power.

It would be true to say that, in its early years, New Zealand's administration of Western Samoa was not particularly auspicious. There was considerable unrest in Samoa, the most publicised incident being the Mau uprising in 1929 when New Zealand police fired on a demonstration in the streets of Apia killing, among others, the leader Tupua Tamasese Lealofi III (the uncle of the present Prime Minister Tupuola Efi).

However, it would be equally fair to say that in later years both National and Labour governments made conscious efforts to improve the situation and that, unlike many former colonial and trustee territories in Africa, Asia and elsewhere, Western Samoa moved to a peaceful and democratic independence in 1962. That is something that reflects favourably on both New Zealand and Samoa.

In 1923 and again in 1928 the New Zealand Parliament passed a law which was intended to give effect to a 1913 British Act allowing for the naturalisation (as British subjects) of persons who did not otherwise hold that status. In 1948 (pursuant to an agreement amongst the Dominions) our Parliament passed the British Nationality and New Zealand Citizenship Act which effectively said that all

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New Zealanders who were previously British subjects became New Zealand citizens from 1 January 1949. It was the combined application of those laws that led the Privy Council to its decision, the effect of which was that any person born in Western Samoa between 1924 and 1948 and a substantial number of their descendants (children and grandchildren) were deemed to be New Zealand citizens.

The Quota System and Overstayers

I should immediately explain that, despite the close relationship between the two countries, Western Samoa never had an unrestricted right of entry into New Zealand. However, government policies for many years have allowed for a substantial quota of Western Samoans to take up permanent residence in this country. This quota has been varied from time to time as our economic circumstances, and especially our employment levels, have dictated. At present 1100 people can come here each year.

The quota system is unique. Apart from Australia (where there are reciprocal rights of unrestricted entry between the two countries), there is no other country whose residents are not New Zealand citizens but who are nonetheless (regardless of their skills) given entry into this country as part of a quota that is over and above the tight immigration criteria that would otherwise apply to their application.

In addition other Samoans have been allowed to come to New Zealand temporarily as visitors under work permit schemes and for other purposes. Most returned on the expiry of their permit. Some who have come temporarily have subsequently been granted permanent residence. Others remained in New Zealand after their permits expired. In terms of the law (as it was then understood to be), they became illegal immigrants - in popular language "overstayers". Those who were discovered were prosecuted and on being convicted of a breach of the immigration laws were deported. Miss Lesa was an "overstayer". She was duly charged. She claimed that she wasn't liable for conviction or deportation because, although born in Western Samoa, she was a New Zealand citizen. If she was in fact a New Zealand citizen, then the provisions of the Immigration Act (including those relating to overstaying) did not apply to her if she could not be deported.

Levave Case

The New Zealand Court of Appeal had already considered a similar situation in the 1979 case of Levave v Immigration Department. In that case it was claimed that under New

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Zealand law all persons born in Western Samoa between 1928 and 1949 were natural born British subjects and became New Zealand citizens by virtue of the 1948 Act. The three Judges of the Court rejected that proposition. In fact in the Lesa case they described the suggestion as "inconceivable". The Levave case was a criminal matter originating in the District Court. In such cases the Court of Appeal is the final appeal authority.

To enable Miss Lesa's case to be brought before the Privy Council she applied for a declaration as to the interpretation of the 1928 Act. The case was removed from the High Court to the Court of Appeal which, knowing that the case had been brought in this way so that the argument could ultimately be presented to the Privy Council, asked the lawyers on both sides whether there were any new matters to be dealt with apart from those already canvassed in the Levave case. On being told that there were no new arguments, the Court of Appeal merely delivered a formal decision confirming its view in the Levave case and the matter was then appealed to the Privy Council. And so one of the many unusual aspects of Miss Lesa's case was that the substantial issues were argued for the first and only time before the Privy Council, and not in any court within New Zealand.

A'Constitutional Bombshell'

On 19 July 1982 the Privy Council delivered its decision. It could fairly be described as a "constitutional bombshell". To the surprise of most, it overruled the Court of Appeal and accepted Miss Lesa's claim that she was a British subject in 1948 and thus was a New Zealand citizen now. As I said earlier, the Privy Council's interpretation of the 1928 Act remained as the law of New Zealand unless and until it was reversed by Parliament passing a law to that effect. In fact the only way that the law as declared by the Privy Council could be changed was by legislation passed by the New Zealand Parliament. Indeed the Privy Council itself, like many other courts over the years, has expressly said that that is how such changes are to be made if they are considered necessary.

In the case of Abeyesekera v Jayatilake (1932), which was an appeal from a decision in a Sri Lankan (then Ceylonese) case, Lord Darling said

> "It may be true that 'not Jove himself upon the past hath power', but legislators have certainly the right to prevent, alter or reverse the consequences of their past decrees".

In the light of some of the criticism of the Citizenship (Western Samoa) Act, and for that matter the Clyde Dam legislation that is currently before Parliament, that statement should be emphasised.

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If a person finds a tax loophole thus avoiding paying his fair share of the tax burden, then Parliament usually moves to plug the gap, and all other taxpayers applaud. Or if, as has happened a number of times since the law was first passed in 1969, someone finds a technical defence to a blood alcohol offence, again Parliament usually moves to pass a law to deal with the situation, and again law-abiding road users express their strong agreement. In so doing Parliament is not saying that the Courts were wrong (even if it may think that). It is simply saying that the interpretation by the Courts placed on the Act of Parliament in question did not accord with the intention of Parliament.

There can be no doubt that the Privy Council's decision did not accord with previous understandings of the law either in New Zealand or in Samoa - an understanding that has consistently shaped both legislation and practice in both countries since the first World War. For sixty years virtually no one believed that Western Samoans were British subjects owing allegiance to the British Crown. Certainly the Samoan Working Party on Self -Government was firmly of the view not only that upon independence Samoans should have their own separate Samoan citizenship, as befitted the citizens of a sovereign independent state, but also that they should not hold the citizenship of any other state. In fact the Citizenship or Western Samoa Ordinance of 1959 reflected this view. For the 20 years since independence the governments and people of Western Samoa and New Zealand have proceeded on the clear basis that Western Samoan citizenship and New Zealand citizenship were quite separate and distinct.

The Privy Council decision was based solely on a legal construction of the relevant acts of the New Zealand Parliament and did not take into account any matters of international law and practice nor, obviously, the law of Western Samoa. One only has to read the Hansard record of the Parliamentary debate leading to the passing of the 1928 Act to see that in no way was it intended that it should have the effect of declaring Western Samoans to be New Zealand citizens.

Legal Objections to Privy Council Decision

However, what the Privy Council decision means is that both the 1928 and 1923 statutes produced an unintended result to that effect,

(i) That result was contrary to the firm view of the League of Nations that inhabitants of mandated territories did not and should not automatically become citizens of the mandatory country, and was also contrary to assurances given by New Zealand to the League that Samoans were not British subjects.

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(ii) It was contrary to the assumptions upon which the Samoan Working Committee on Self-Government based its work, and upon which the Act of Independence proceeded.

(iii) It was contrary to the general practice throughout the Commonwealth, after the abandonment of the common code relating to the status of British subjects, that inhabitants of each country which became independent ceased to be citizens or protected persons of the former colonial power and acquired their own separate citizenship.

(iv) Finally it was contrary to the basis on which the Western Samoan and New Zealand Governments, and the people of each country had conducted their affairs since Western Samoa's independence in 1962.

Indeed, had in 1982 the New Zealand Parliament moved to pass a law that had precisely the same effect as the Privy Council decision, that would almost certainly, and very properly, have been regarded by the Government and people of Western Samoa as an unfriendly act towards a sovereign and independent state.

I was somewhat surprised to read in a recent issue of the Listener (25/9/82) a letter from two prominent academic lawyers. They said two things :

(1) that in their view the decision was right. As I have made clear, I don't intend to join them in that argument on this occasion;

(2) that they thought it was a dangerous notion 'that courts can simply manipulate rules of law to get the result which is commonly expected.'

I find that statement coming from academic lawyers to be somewhat astonishing.

No one suggests that the courts should deliver "popular" or politically motivated decisions. But the law is not created, nor does it operate, in some sort of theoretical vacuum. The law is a living letter, related to the circumstances and situation that led to its passing. That fact is recognised.

In New Zealand, unlike many other countries, we have a special rule of statutory interpretation. Every law student can recite it from memory - sections 5(J) of the Act Interpretation Act which says that :

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"Every Act...shall be deemed remedial...and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the act... according to its true intent, meaning and spirit".

It may well be that the Privy Council took the view that, regardless of what Parliament may have intended, it didn't achieve that intent by the words that it used in the 1928 Act, but to suggest that achieving a "result which is commonly expected" is a "Manipulat ion of rules of law" is in my view simply not correct. One has only to look at the history and background of the matter, and for that matter the statements made at the time, to see that it was not "the object of the Act" nor was it its "true intent, meaning and spirit" that Western Samoans should become New Zealand citizens. The fact that this has happened as a result of a slip of the draftsman's pen in my view justified Parliament moving to correct the situation, even it it had to do it some 44 years after the event.

There can be absolutely no doubt that the Privy Council's decision did not accord with the past understanding of the law, whether in New Zealand or Western Samoa, or for that matter at international law. Moreover, as construed by the Privy Council, the New Zealand Statute of 1928 not only failed to produce the result generally believed of it, and which it was intended to achieve, but also gave rise to a situation which, if left unremedied, would have had serious and far-reaching implications for both New Zealand and Western Samoa.

Demographic Implications

Precisely how many people would have had the status of New Zealand citizens as a result of the decision is uncertain. The best estimate by both Governments was that something of the order of 100,000 people were affected - over three-fifths of the total population of Western Samoa of 160,000. Let me say, however, that at no time was it ever suggested by anybody in a position of responsbility that 100,000 Samoans would suddenly arrive in New Zealand. Nonetheless, there is no doubt that there would be great stress on our resources if many thousands of people born outside New Zealand and living outside this country could come here and settle at any time.

Virtually every country feels the need to impose restrictions on entry for permanent residence. Despite some claims that were made to the contrary, these are matters of legitimate concern. The New Zealand Council for Civil Liberties, in an excellent submission to the Foreign Affairs Select Committee, and while arguing against much of the substance of the Protocol and Bill, made the entirely

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valid point that "the change wrought by the Privy Council decision raises the question whether it would lead to a migrant flow large enough to warrant action by either Western Samoa or New Zealand", and in its oral submission said that there clearly was a "threshold" beyond which no country could reasonably be expected to take in immigrants from another part of the world. And one hardly need to refer to the obvious implications, economic and social, to Samoa of any significant outflow of its own population.

It was because the matter had important implications to both countries that the issues were canvassed, and canvassed extensively, in the discussions that took place between the Governments of New Zealand and Western Samoa. It was during those discussions that the 1962 Treaty of Friendship between the two countries was seen to point the way towards a solution to the problem.

Protocol to the Treaty of Friendship

And so a Protocol to the Treaty of Friendship was agreed to and signed by the Western Samoan Government and me in Apia on 21 August 1982. Under that Protocol :

(1) The two Governments undertook on request to consult on any issue relating to the operation of citizenship and immigration laws.

(2) New Zealand would give Western Samoan citizens currently in New Zealand the right to become New Zealand citizens immediately on application.

(3) New Zealand would give the same right to Western Samoans who are subsequently granted permanent residence in New Zealand.

Once the Protocol had been signed, New Zealand had an obligation at international law to pass such legislation as was necessary to give effect to the Protocol. That has now been done.

Citizenship (Western Samoa) Act

The Citizenship (Western Samoa) Act became law on 14 September 1982, and the necessary documents to ratify the Protocol were exchanged in Apia on the same day. As you know, while the Bill was being considered by Parliament, it attracted some criticism. I've got to say that, in so far as that criticism came from certain groups of Western Samoans in New Zealand, some of it was misdirected, because what it really sought to achieve was immigration access to

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New Zealand rather than the status of New Zealand citizenship (which even now the majority of Western Samoans would prefer not to have).

But I've also got to say that during the time the Bill was being debated by the House, I was contacted by a number of Western Samoans expressing their support for the Bill and urging that it should be passed at the earliest opportunity. Some of them told me that they felt no need to make submissions on the Bill because they supported what Parliament proposed to do. Such an attitude may not necessarily accord with our own appreciation of Parliamentary procedures, but is quite readily understandable.

The criticism that attracted the most attention was the claim that the Bill might in some way be "racist" because it directed its attention solely towards a group of persons selected principally according to their race or colour. The Act applies to those persons covered by the Privy Council decision. Had it been realised at the time of Western Samoan independence in 1962 that the effect of the 1928 Act was to make those people New Zealand citizens, the Western Samoans themselves would have asked the New Zealand Parliament to repeal the effect of such law, and we would certainly have responded to that request. In no way could such an action have been said to be racist or discriminatory in 1962. Similarly it cannot be said to be such today.

Indeed it is significant that when they appeared before the select committee, three of the four Human Rights Commissioners indicated that they regarded the use of the word "racist" as "inappropriate" and "unfortunate". The majority of Members of Parliament, in all parties, also rejected any suggestion of racism.

Another criticism was that the Act constituted a deprivation of basic human rights. The logic of that argument wasn't easy to follow.

The Privy Council decisions surprised virtually everyone. It has long been believed, not only in New Zealand but also in Samoa, that Samoans were not New Zealand citizens. They are Samoan citizens; Samoa is their country. Western Samoa is a proud and independent sovereign state whose people enjoy status and recognition as citizens of their own country. Since 1962 their citizenship has never been "watered down" by association with any other State.

Birthright?

The situation must surely be unique when, twenty years after the formal independence of a country, it is discovered

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that the bulk of its population are also citizens of the former administering power by virtue of an accident of law drafting.

It is quite simply wrong to talk in this context of "inalienable rights" or a "birthright" when those so-called rights were not previously known to exist, let alone exercised and enjoyed, and when there is not the slightest question that anyone will become stateless. Such claims are little short of rhetorical. A birthright is something one is aware of and if necessary prepared to exercise. Esau sold his birthright to Jacob for a mess of pottage. Shakespeare in King John wrote of those who wore "their birthrights proudly on their backs". Clearly a birthright arises from something more than the mere slip of a draftsman's pen.

Another criticism was that the legislation was really a migration measure. I certainly don't deny its importance from the immigration point of view. But the Bill is essentially a citizenship measure (as in fact was the Lesa case). And I believe that it is recognised as such in Western Samoa.

It is of course citizenship that gives a person unimpeded access to the country of which he is a citizen. But it is hardly reasonable, nor indeed logical, to argue from the opposite point of view and to claim (as some did) that people of some Pacific countries should be able to migrate to New Zealand and that therefore they should have New Zealand citizenship to facilitate this. The same reasoning could equally apply to other countries with which New Zealand has regional, historical or family ties, such as Tonga and Fiji, or even Great Britain, Holland or Yugoslavia.

Conclusions

It must be emphasised that the Citizenship (Western Samoa) Act recognised the formidable legal victory won by the two lawyers who argued the case before the Privy Council - a victory won not only for Miss Lesa, but also on behalf of all those people whom she represented. No Act of Parliament could or should take away the fruits of that victory, and this one certainly did not.

The Act also recognised the special association between the two countries by giving to other Western Samoans legally in New Zealand the right to become New Zealand citizens if they wished. But they would not have it forced on them (which was the effect of the Privy Council decision). And, as in all fairness it should have done, it quashed the

/convictions

convictions of those who had been deported as illegal immigrants and effectively gave them the right to apply for re-entry to New Zealand on an equal footing with others. I must, however, stress that this does not extend to those who have been deported as a result of a conviction for offences against the ordinary criminal law. They are and will remain prohibited immigrants - unable to return to New Zealand.

The Act, which is now part of our New Zealand law, did not take away rights previously exercised by anyone. On the contrary, it accorded to a large number of Western Samoans (those currently in New Zealand and those accepted for permanent residence in the future) a right which generally no one had previously believed they possessed and which certainly they had never exercised. It also achieved the result which everybody had understood to be the case in 1962 - that the citizenship of Western Samoa and New Zealand were separate and distinct, just as the two States themselves, proud, sovereign and independent, were separate and distinct.

Nonetheless, they enjoy a close relationship. It is a relationship born, first, of nearly 45 years of administration followed by 20 years of separate independent status, but bound closely by a treaty of friendship as well as by regional and family ties.

As I said at the ceremony at which the Protocol was signed, the agreement that had been reached between our two countries was an indication of the maturity of that relationship. It must be unique to have a situation where many people in a former territory are still, twenty years after independence, apparently anxious to hold the citizenship of the former administering state. That is something of which we should feel particularly proud. Certainly it is something that must have a profound effect upon our future relationship with Western Samoa.

31/6/2011

FROM APIA IMMEDIATE

For Beeby from Caffin.

WESTERN SAMOA : PRIVY COUNCIL DECISION

1. Our telephone conversation of this morning refers.

2. Have spoken to Iulai who assures me that there is absolutely no question of any change to language or substance of protocol that is agreed to as presented. There will be no need therefore for a legal adviser to accompany Mr McLay.

Out of scope

Out of Scope

CONFIDENTIAL

CONFIDENTIAL 21 JUL 82
FROM WELLINGTON
TO APIA 1157 - IMMEDIATE - URGENT

P M D
SFA (LGL SPA)

CITIZENSHIP
PLEASE CONVEY AS SOON AS POSSIBLE THE FOLLOWING MESSAGE TO THE PRIME MINISTER FROM MR MULDOON
BEGINS

DEAR PRIME MINISTER

YOU WILL HAVE HEARD REPORTS OF THE RECENT DECISION BY THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL ON THE CITIZENSHIP STATUS OF SAMOANS. AT THE MOMENT WE HAVE ONLY THE FACT OF THE DECISION AND NOT RPT NOT THE WRITTEN JUDGMENT WITH THE REASONS BEHIND IT. IT IS IMMEDIATELY OBVIOUS, HOWEVER, THAT THE DECISION HAS PROFOUND IMPLICATIONS FOR BOTH OUR COUNTRIES AND FOR THE RELATIONSHIP BETWEEN THEM. IT CLEARLY AFFECTS THE APPLICATION OF SAMOA'S OWN CITIZENSHIP LAW AND SAMOA'S STANDING AS AN INDEPENDENT STATE. I THINK THAT WE SHOULD MEET FAIRLY SOON TO DISCUSS THESE IMPLICATIONS.

WOULD IT BE POSSIBLE FOR YOU TO STAY ON FOR A DAY OR TWO AFTER THE FORUM AND COME DOWN TO WELLINGTON.

YOURS SINCERELY

R D MULDOON
PRIME MINISTER

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CONFIDENTIAL

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Richardson
Circulate in SPA.

311/6/2011

UNCLAS 22 JULY 1982
FROM WELLINGTON
TO CANBERRA 2539 IMMEDIATE
APIA 1169 IMMEDIATE

URGENT

PMD
SFA (SPA AUS) LGL

WESTERN SAMOA PRIVY COUNCIL DECISION
FOLLOWING IS TRANSCRIPT OF PRIME MINISTER'S POST-CAUCUS
PRESS CONFERENCE REMARKS TODAY

PRESS CONFERENCE HELD BY PRIME MINISTER
RT. HON. R.D. MULDOON. 22 JULY 1982
POST - CAUCUS

MR MULDOON: THE FIRST THING, THE BUDGET WILL BE ON 5TH AUGUST. THEN THE QUESTION OF SAMOA...SAMOANS. I HAVE BROUGHT CAUCUS UP-TO-DATE ON OUR THINKING THERE. ITS CLEARLY A VERY SERIOUS MATTER OF GREAT CONSTITUTIONAL IMPORTANCE AND WE HAVE TO DEAL WITH IT VERY VERYCAREFULLY. IT INVOLVES THE SAMOAN GOVERNMENT AND PEOPLE, POTENTIALLY IT INVOLVES AUSTRALIA AND OUR RELATIONSHIP WITH AUSTRALIA, TRANSTASMAN MIGRATION, AND INDEED BRITAIN IN THE SAME SENSE. IN THE MEANTIME I HAVE SENT A MESSAGE TO THE PRIME MINISTER OF SAMOA WHO WILL BE DOWN HERE IN A WEEK OR TWO FOR THE SOUTH PACIFIC FORUM AND INVITED HIM

Harris
Richards

TO STAY ON FOR A DAY OR TWO TO DISCUSS THE IMPLICATIONS OF THIS DECISION ABOUT THE MIDDLE OF NEXT WEEK. IT DOES NOT APPLY UNTIL IT IS FINALLY APPROVED BY THE QUEEN IN COUNCIL AND WE EXPECT THAT TO BE ABOUT THE MIDDLE OF NEXT WEEK. SO AT THIS MOMENT IT IS NOT OPERATIVE. WE HAVE SENT INSTRUCTIONS TO OUR OFFICE IN SAMOA NOT TO ISSUE ANY VISAS IN THE MEANTIME EXCEPT FOR URGENT PURPOSES, SUCH THINGS AS BUSINESSMEN WISHING TO TRAVEL IN THE NORMAL COURSE, EMERGENCY CASES AND THE LIKE. THE LABOUR PARTY HAS ASKED THAT THEY BE BRIEFED BY THE SOLICITOR-GENERAL WHO ARRIVED BACK THIS MORNING, AND WE WILL CERTAINLY AGREE TO THAT THE CURIOUS THING IS THAT THEY HAVE MADE UP THEIR MINDS AS TO THEIR ATTITUDE BEFORE THEY HAVE BEEN BRIEFED AND THE GOVERNMENT IS CERTAINLY NOT GOING TO DO THAT. WE HAVE GOT TO LOOK AT THIS VERY VERY CAREFULLY. IT IS VERY INVOLVED AND CLEARLY ON THE EXAMINATION THAT WE HAVE MADE UP UNTIL THIS POINT THERE ARE CONFLICTS IN...BETWEEN WHAT ARE BASIC FACTS, AND WHEN WE ATTEMPT TO RESOLVE THOSE CONFLICTS FOR THE LONG TERM WE MUST HAVE REGARDS TO THE VIEWS OF THE SAMOAN GOVERNMENT AND PEOPLE, AND YOU HAVE THE UNFORTUNATE SITUATION WHERE THE SAMOAN GOVERNMENT AT THE PRESENT TIME IS NOT FIRMLY IN OFFICE BECAUSE THERE ARE VARIOUS PETITIONS AND APPEALS TAKING PLACEUP THERE, ONE OF WHICH IS IN THE HANDS OF THREE NEW ZEALAND APPOINTEES WHO HAVE YET TO DELIVER A JUDGEMENT.

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AND SO, REALLY, YOU HAVE GOT A CONFUSED SITUATION THAT WILL NOT BE MADE CLEAR FOR SOME LITTLE TIME, AND IN THE MEANTIME IN THE LIGHT OF ALL THE PUBLICITY WE DO NOT THINK WE SHOULD ISSUE ANY GENERAL VISAS FOR TRAVEL BY SAMOANS TO NEW ZEALAND.

PRESS: IS IT CORRECT PRIME MINISTER THE GOVERNMENT WILL TAKE NO ACTION UNTIL SUCH TIME AS THE DECISION IS ACTUALLY REVEALED AND MADE FORMALISED BY AN ORDERIN COUNCIL BY THE QUEEN ROUND ABOUT THE MIDDLE OF NEXT WEEK OR DO YOU PLAN.....

MR MULDOON: NO, I THINK I HAVE TOLD YOU WHAT THE GOVERNMENT IS DOING, SURELY EVERYTHING I HAVE SAID IN THE LAST FIVE MINUTES COVERS THE ANSWER TO YOUR QUESTION?

PRESS: APART FROM SAMOA, I MEAN ANY SORT OF LEGISLATIVE ACTION OR ANY DECISION ON HOW TO GET OUT OF IT NOTHING WILL BE TAKEN BEFORE THAT TIME?

MR MULDOON: NO, I DID NOT SAY THAT. WHAT I SAID WAS THAT...WELL YOU HEARD WHAT I SAID.

PRESS: THERE HAS BEEN SPECULATION THAT THERE COULD BE LEGISLATION INTRODUCED BEFORE IT BECOMES EFFECTIVE AT SUCH TIME BEFORE IT IS FORMALISED BY THE QUEEN.

MR MULDOON: WELL WE HAVE CERTAINLY TAKEN NO SUCH DECISION.

PRESS: CAN WE TAKE IT THAT THERE WILL BE NO ACTION TAKEN LEGISLATIVE FORM BEFORE YOU HAVE HAD FULL CONSULTATIONS WITH THE SAMOAN GOVERNMENT?

MR MULDOON: BEFORE WE HAVE HAD FULL CONSULTATIONS? WE WILL NOT BE TALKING TO THE SAMOAN GOVERNMENT FOR SEVERAL WEEKS, THIS IS ABOUT THE 12TH OF AUGUST WE ARE TALKING ABOUT. NOW WE CANNOT UNDERTAKE THAT WE WILL TAKE NO ACTION WHETHER LEGISLATIVE OR OTHERWISE OVER THAT KIND OF A PERIOD. INDEED, WE HAVE ALREADY TAKEN THE ACTION TO LIMIT VISAS AS REALLY A HOLDING POSITION.

PRESS: ONCE THE ORDER IN COUNCIL IS PASSED, AND THE PRIVY COUNCIL DECISION BECOMES EFFECTIVE DOES THE NEW ZEALAND GOVERNMENT HAVE THE POWER TO REFUSE VISAS, OR DOES... OR WILL IT BE NECESSARY FOR SAMOANS TO HAVE VISAS TO ENTER NEW ZEALAND?

MR MULDOON: I CANNOT ANSWER THAT QUESTION AT THE MOMENT. YOU SEE THIS IS AT A VERY EARLY STAGE, AND WHAT WE ARE DOING NOW IS GETTING OUR OFFICIALS TO BRING TOGETHER AS MUCH MATERIAL AS THEY CAN ON THIS WHOLE QUESTION. AND CENTRAL TO THAT WILL BE THE ADVICE WE WILL GET FROM THE SOLICITOR-GENERAL WHO HAS BEEN IN THE MIDDLE OF IT IN LONDON. I THINK AT THIS MOMENT THE LEAST SAID SOONEST MENDED, UNTIL WE KNOW EXACTLY WHAT IT ALL AMOUNTS TO, ITS A VERY VERY IMPORTANT ISSUE.

PRESS: HAS THE GOVERNMENT CONSIDERED AT ALL ASKING THE QUEEN TO WITHHOLD HER ASSENT?

MR MULDOON: NO.

PRESS: IS THERE ANY POSSIBILITY OF RE-STATING A CASE TO THE PRIVY COUNCIL?

MR MULDOON: I CANNOT ANSWER THAT EITHER. I CANNOT ANSWER ANY OF THESE INVOLVED LEGAL QUESTIONS BECAUSE WE SIMPLY HAVE NOT HAD ADVICE AND WE WOULD NOT REALLY WANT TO CONSIDER THESE MATTERS UNTIL THE SOLICITOR-GENERAL IS BACK HERE AND HAS TIME TO PUT HIS CONTRIBUTION INTO THE ADVICE THAT WE ARE GETTING.

PRESS: THERE HAS BEEN CRITICISM OF THE WAY THE CASE WAS PRESENTED. DO YOU HAVE ANY COMMENTS ON THAT?

MR MULDOON: NO.

PRESS: WOULD YOU EXPECT ANY MEETINGS WITH MR NEAZOR TODAY OR IS MR MCLAY GOING TO.....

MR MULDOON: WELL MR MCLAY HAS ALREADY HAD A BRIEF MEETING WITH HIM. BUT YOU WILL REALISE THAT HE HAS TRAVELLED BACK FROM BRITAIN FAIRLY RAPIDLY AND THOSE OF YOU WHO HAVE DONE IT KNOW WHAT THAT MEANS, YOU ARE NOT GOING TO BE CAPABLE OF GIVING VERY PRECISE ADVICE FOR AN HOUR OR TWO (CHUCKLES).

PRESS: COULD WE JUST REVERT TO THE QUESTION OF THE BUDGET WHICH YOU HAVE SAID WILL BE ON AUGUST 5TH. DOES THAT MEAN THAT IT WAS NOT POSSIBLE TO HAVE IT READY BY THE 29TH OR HAVE YOU CHOSEN.....

MR MULDOON: IT WOULD HAVE BEEN POSSIBLE BUT I WAS NOT KEEN TO DO IT, IT WOULD BE GOING IT IN A RUSH. IT IS A VERY COMPLEX BUDGET AND WHEREAS WE COULD HAVE RUSHED THE PRINTING AND DONE IT NEXT THURSDAY.

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K68973
WLN 22/0551Z PT

DII/6/2011

CONFIDENTIAL 23 JULY 1982
FROM WELLINGTON
TO APIA 1174 I M M E D I A T E

CONFIDENTIAL

URGENT

P M D
SFA (LGL SPA)

CITIZENSHIP
OUR 1157.
VAAI KALONE HAS REPLIED TO THE PRIME MINISTER'S MESSAGE THI 'GH
THE HIGH COMMISSIONER IN WELLINGTON. FOLLOWING IS VAAI KOL
REPLY:

''DEAR PRIME MINISTER,

s6(b)

YOURS SINCERELY,
VAAI KOLONE
PRIME MINISTER.''

CONFIDENTIAL

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K69349
WLN 23/2325Z SH +

COL 1174 +

31/6/2011

CONFIDENTIAL 23 JULY 1982
FROM WELLINGTON
TO APIA 1179 ROUTINE

CONFIDENTIAL

P/S MINISTER OF IMMIGRATION
SECLAB
INTERNAL (MCLAY)
JUSTICE (MRS LOWE)
CROWN LAW
PMD
SFA (CONS LGL SPA)

FROM SECLAB
IMMIGRATION ACTION FOLLOWING PRIVY COUNCIL DECISION
FURTHER TO OUR 1168
NO REPEAT NO ACTION SHOULD BE TAKEN TO CANCEL ANY VISA ISSUED
PRIOR TO 22 JULY 1982 WHICH HAS NOT BEEN USED.

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K69427
WLN 23/0710Z PT

CONFIDENTIAL

COL 1179 1168 22 1982

3410/6/20/1

RESTRICTED

RESTRICTED 23 JUL 82
FROM WELLINGTON
TO LONDON 4888 - ROUTINE -
RPTD APIA 1182, CANBERRA 2609 - ROUTINE -

P M D
SECLAB (BOND)
INTERNAL (MCLAY)
JUSTICE (MRS LOWE)
CROWN LAW (NEAZOR)
SFA (LGL SPA CON AUS)

PRIVY COUNCIL DECISION RELATING TO ENTITLEMENT OF WESTERN SAMOANS TO THE NEW ZEALAND CITIZENSHIP

YOUR 7167 REFERS.
GRATEFUL YOU TELEX TO WELLINGTON FULL TEXT OF PRIVY COUNCIL DECISION, REGARDLESS OF LENGTH, IMMEDIATELY IT IS AVAILABLE
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RESTRICTED

K 69538
23/0730Z WLN TGA
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Released under the Official Information Act

Ridris
Ridgeway

311/6/2011

UNCLAS 27 JULY 1982
FROM WELLINGTON
TO APIA 1184 I M M E D I A T E
RPTD CANBERRA 2623 ROUTINE

P.S. MFA
PMD
SFA (SPA, AUS, LGL)

WESTERN SAMOA : PRIVY COUNCIL DECISION :

FOLLOWING ARE KEY EXTRACTS FROM PRIME MINISTERS POST-CABINET PRESS CONFERENCE 26 JULY.

MR MULDOON: WE HAD A CHAT ABOUT SAMOA, AND IT IS GOING TO BE, I AM AFRAID, A CONTINUING STORY UNTIL WE GET IT SORTED OUT. FIRST OF ALL UNTIL WE GET THE DETAIL LATER THIS WEEK, THERE WILL BE NOTHING VERY MUCH HAPPENING. DID I TELL YOU THAT VA'AI KOLONE THE PRIME MINISTER IS GOING TO STAY FOR A DAY OR TWO AFTER THE FORUM MEETING, AND I DO NOT THINK VERY MUCH WILL HAPPEN UNTIL WE HAVE HAD A CONSULTATION WITH HIM. WE MUST TAKE THE VIEW OF THE SAMOAN GOVERNMENT INTO ACCOUNT, IT IS OBVIOUSLY OF GREAT IMPORTANCE TO THEM AS WELL AS TO US, AND, I AM SURE THEY WILL NOT BE HAPPY TO SEE LARGE NUMBERS OF THEIR PEOPLE COMING DOWN HERE.
PRESS: HAS ANY THOUGHT BEEN GIVEN BY THE GOVERNMENT TO DRAWING UP STAND BY LEGISLATION?
MR MULDOON: WE HAVE CANVASSED ALL KINDS OF OPTIONS BUT WE HAVE MADE NO DECISIONS. WE DO NOT THINK THERE IS GOING TO BE ANY IMMEDIATE URGENCY IN THIS THING.
PRES: HAS MR MCLAY REPORTED ON HIS DISCUSSIONS WITH THE SOLICITOR-GENERAL AFTER HIS RETURN FROM LONDON?
MR MULDOON: WELL HE HAS REPORTED VERBALLY, BUT THESE DISCUSSIONS ARE CONTINUING. IT IS NOT JUST THE SOLICITOR-GENERAL, WE HAVE A NUMBER OF OFFICIALS WHO ARE INVOLVED IN THIS TRYING TO CLARIFY IT, AND THEY WILL NOT BE ABLE TO GET FAR FINALY UNTIL WE HAVE GOT THE PRIVY COUNCIL DECISION. AND A MOST EXTRAORDINARY THING THAT THE DECISION COMES OUT WITHOUT THE JUDGEMENT THAT SUPPORTS IT, MOST EXTRAORDINARY.
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K7Q236
271108LT BB

311/6/2011

RESTRICTED 27 JULY 1982
FROM WELLINGTON
TO APIA 1187 I M M E D I A T E

RESTRICTED

P.S. MINISTER OF IMMIGRATION
SECLAB
SFA (CON, SPA, LGL)

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RESTRICTION ON ISSUING VISAS (OUR REF 22/1/127):

MINISTER HAS BEEN APPROACHED BY s9(2)(a) FOR SPECIAL DISPENSATION TO ALLOW VISAS TO BE ISSUED TO HIS s9(2)(a)
s9(2)(a)

s9(2)(a) PROPOSED DEPARTURE DATE NOT/NOT KNOWN. OUR 1168 OUTLINED CASES CONSIDERED TO JUSTIFY ISSUING OF VISAS. MINISTER IS ANXIOUS NOT/NOT TO EXPAND THAT LIST OR CREATE PRECEDENTS. GRATEFUL EARLY INDICATION FROM YOU THE RE-ACTION BEING EXPERIENCED BY YOU FROM PERSONS BEING REFUSED. AND SOME IDEA OF THE TYPES OF CASES BEING PRESENTED TO YOU FOR CONSIDERATION AS EXCEPTIONS.

REALISE IT IS VERY EARLY DAYS. PLEASE ALSO INDICATE IF YOU HAVE RECEIVED AN APPROACH FROM s9(2)(a) MENTIONED.

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RESTRICTED

K70327
271440LT BB

Mr Davis
[illegible]
[illegible]

311/6/2011

RESTRICTED

RESTRICTED 29 JULY 1982
FROM WELLINGTON
TO APIA 1200 I M M E D I A T E

P.S. MINISTER OF IMMIGRATION
PMD
INTERNAL AFFAIRS (MCLAY)
SECLAB
SFA (CON, SPA, LGE)

RESTRICTIONS ON ISSUING ENTRY VISA'S (OUR REF 22/1/127)

OUR 1187 AND YOUR 1069.

THE INFORMATION YOU HAVE PROVIDED WAS VERY HELPFUL. THE QUESTION POSED IN YOUR PARA 3 CAN'T BE ANSWERED DIRECTLY AT THIS STAGE BUT I AM AWARE THAT MFA WILL BE SENDING FURTHER INFORMATION TO YOU SOON THAT WILL PUT YOU MORE IN THE PICTURE. IT WOULD BE HELPFUL IF YOU CONTINUED TO REPORT EACH TWO DAYS ON THE RE-ACTIONS TO THE RESTRICTIONS AND KEEP US INFORMED ON THE NUMBER OF PERMITS ISSUED.

MINISTER OF IMMIGRATION HAS INFORMED s9(2)(a) THAT VISAS FOR HIS RELATIVES WILL NOT REPEAT NOT BE ISSUED. WILL REPLY REGARDING s9(2)(a) SOONEST.

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RESTRICTED

K71244
291100LT BB

31/6/2011

UNCLAS 29 JULY 82
FROM WELLINGTON
TO APIA 1206 IMMEDIATE
RPTD CANBERRA 2665 LONDON 4999 PRIORITY

PMD
SFA (LGL SPA CON AUS)
SECLAB (BOND)
INTERNAL (MCLAY)
JUSTICE (LOWE)
CROWN LAW (NEAZOR)

PRIVY COUNCIL DECISION

THE PRIME MINISTER RELEASED THE FOLLOWING PRESS STATEMENT ON 29 JULY:

BEGINS

THE REASONS FOR JUDGMENT NOW PUBLISHED SET OUT THE CONSIDERATIONS BEHIND THE PRIVY COUNCIL'S DECISION LAST WEEK. THAT DECISION HELD THAT ON AN INTERPRETATION OF LEGISLATION PASSED IN 1923 AND 1928 PERSONS BORN IN WESTERN SAMOA BETWEEN 1924 AND 1948 BECAME IN THE EYES OF NEW ZEALAND LAW BRITISH SUBJECTS JUST AS IF THEY HAD BEEN BORN IN NEW ZEALAND. THE DECISION THEREFORE TURNED ON THE INTERPRETATION OF TWO STATUTES PASSED MORE THAN 50 YEARS AGO (AND REPEALED IN 1948). IT DID NOT TURN ON THE WIDER INTERNATIONAL OBLIGATIONS UNDERSTOOD BY NEW ZEALAND UNDER ITS MANDATE AND SUBSEQUENT TRUSTEESHIP FOR WESTERN SAMOA.

THE COUNCIL'S DECISION HAS DECLARED THE LAW FOR NEW ZEALAND. THE APPEAL WAS ON A POINT OF NEW ZEALAND LAW AND THERE WAS THEREFORE NO QUESTION OF SAMOA BEING REPRESENTED AT THE COUNCIL PROCEEDINGS.

THE DECISION HAS HOWEVER CREATED AN ANOMALOUS SITUATION FOR BOTH NEW ZEALAND AND WESTERN SAMOA. IT DECLARES THE ASSUMPTIONS ON WHICH BOTH GOVERNMENTS AND PARLIAMENTS HAVE ACTED IN THEIR LEGISLATION AND ADMINISTRATIVE PRACTICE OVER A PERIOD OF NEARLY 60 YEARS TO HAVE BEEN WRONG.

K 71360

Mollis
Richardson
Lowe