



HIGH COURT OF AUSTRALIA

Public Information Officer

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LOMANI JOEY KOROITAMANA (an infant by her next friend Sereana Naikelekele) AND
MEREANI DIVOLIVOLI ((an infant by her next friend Sereana Naikelekele) v
COMMONWEALTH OF AUSTRALIA AND MINISTER FOR IMMIGRATION AND
MULTICULTURAL AND INDIGENOUS AFFAIRS

Two girls, who were born in Australia to Fijian parents, and who have the right to take out Fijian citizenship but who have not done so, are aliens under Australian law, the High Court of Australia held today.

Lomani was born in Australia on 26 August 2000 and Mereani on 3 September 1998. They have remained continuously in Australia. Neither their mother, Sereana Naikelekele, nor their father, Maika Koroitamana, is an Australian citizen or a permanent resident and neither girl is an Australian citizen. Under the Constitution of Fiji, the girls may become citizens of Fiji by registration, but no application for registration has been made by them or on their behalf.

The girls, who have been placed in immigration detention, commenced proceedings to challenge section 189 of the *Migration Act* which provides for detention of unlawful non-citizens and section 198 which provides for removal from Australia of unlawful non-citizens. They claim that under section 51(xix) of the Constitution the power to make laws with respect naturalisation and aliens does not extend to a power to treat them as aliens. In the Federal Court of Australia, Justice Arthur Emmett stated a case for the consideration of the Full Court which answered “yes” to the question of whether the girls were aliens within the meaning of section 51(xix).

Lomani and Mereani sought special leave to appeal to the High Court. Their application was referred to a Full Court of seven Justices and argued fully as on an appeal. The Court unanimously granted the application for leave to appeal but dismissed the appeal. In 2004, the Court, by a 5-2 majority, in *Singh v Commonwealth* held that birth in Australia does not of itself mean that a person is beyond the reach of the power conferred on Parliament by section 51(xix) and does not mean that that person cannot be treated as an alien. Tania Singh was born in Australia to Indian parents. Lomani and Mereani said the difference between their case and *Singh* was that Tania was a citizen of India by descent from her parents whereas they are not citizens of Fiji. They argued that a person born in Australia could not possibly answer the description of “alien” unless they could be shown to have foreign allegiance.

The Court held that it is open to Parliament to decide that an Australian-born child of parents who are foreign nationals is not automatically entitled to citizenship.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court’s reasons.*