

2015-09-21

Fråga-svar

Indien. Möjlighet till bosättning för pakistansk-indisk familj i Indien (medborgarskap, uppehållstillstånd, visering)

Fråga

Finns laglig rätt för en muslimsk pakistansk man att resa in och bosätta sig i Indien med en hinduisk indisk kvinna? Mannen är muslim, medborgare i Pakistan, och kvinnan hindu, medborgare i Indien. De har i Sverige fått ett gemensamt barn.

Svar

Nedan följer en sammanställning av information/länkar kring frågan om bosättning av pakistansk-indisk familj i Indien. Sammanställningen gör inte anspråk på att vara uttömmande. Refererade dokument bör alltid läsas i sitt sammanhang.

Lagar, förordningar etc kring bosättning och medborgarskap

På indiska inrikesministeriets webbplats finns en [sammanställning över lagar, förordningar etc inom avdelningen för utlänningsärenden](#). Nedan följer några utdrag ur relevanta lagtexter m.m. Observera att det i respektive text rör sig om ett urval paragrafer och att annan relevant information kan finnas i andra paragrafer etc.

Citizenship Act (1955, med ändringar):

4. Citizenship by descent.- (1) A person born outside India shall be a citizen of India by descent,-

(a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or

(b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth:

(s. 5)

5. Citizenship by registration.- (1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:

- (a) a person of Indian origin who are ordinarily resident in India for seven years before making an application for registration;
- (b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- (c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration.
- (d) minor children of persons who are citizens of India;

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Explanation 1.-For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if -

- (i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and
- (ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

(s. 6)

Citizenship Rules (2009):

3. Application for registration of birth under section 4.- A person may submit an application for registration of birth of his minor child born outside India in terms of sub-section (1) of section 4 in Form I to the Indian consulate in the country, where such child was born, together with a declaration that the child does not hold the passport of any other country.

4. Application for registration under clause (a) of sub-section (1) of section 5.- An application from a person of Indian origin for registration as a citizen of India under clause (a) of sub-section (1) of section 5 shall not be entertained unless –

- (a) the application is made in Form II;
- (b) he gives an undertaking in writing that he shall renounce the citizenship of his country in the event of his application being sanctioned;
- (c) he is ordinarily resident in India for a period of at least seven years on the date of making application; and
- (d) he makes the oath of allegiance as specified in the Second Schedule to the Citizenship Act, 1955.

5. Application for registration under clause (c) of sub-section (1) of section 5.- (1) An application from a person, who is married to a citizen of India, for registration as a citizen of India under clause (c) of sub-section (1) of section 5 shall not be entertained unless –

- (a) the application is made in Form III;

(b) he gives an undertaking in writing that he shall renounce the citizenship of his country in the event of his application being sanctioned;

(c) on the date of making the application he,-

(i) has been ordinarily a resident of India; or

(ii) has been in the service of the Government of India; at least for a period of seven years; and

(d) he makes the oath of allegiance as specified in the Second Schedule to the Citizenship Act, 1955.

(s. 1-2)

Inresa till Indien

På Bureau of Immigration (BOI) webbplats finns en [länksammanställning kring vad som gäller för utlänningar vid inresa](#).

BOI ger bland annat följande information kring inresa till Indien för utlänningar samt äkta make/maka:

- [Foreigners Registration in India](#)

Introduction

All foreigners (including foreigners of Indian origin) visiting India on long term (more than 180 days) Student Visa, Medical Visa, Research Visa and Employment Visa are required to get themselves registered with the Foreigners Regional Registration Officer (FRRO)/ Foreigners Registration Officer (FRO) concerned having jurisdiction over the place where the foreigner intends to stay, within 14 days of arrival. However, Pakistan nationals are required to register within 24 hours of their arrival.

(s. 1)

- [Entry Visa \(X\)](#)

Entry Visa is issued to persons of Indian Origin (PIO) and Foreign Spouses of Indian Nationals.

För personer med Entry Visa (X) finns [ytterligare information](#) på BOIs webbplats.

Pakistanska medborgare

För pakistanska medborgare finns särskild information på BOIs webbplats:

[Pakistani Nationals](#)

Pakistani Nationals are required to register at the check post of entry into India.

They must hand over one copy of VISA application form given to them by the Indian Mission Abroad while granting visa to the immigration authorities at the check post of entry, who will hand over the Residential Permit with him/her to each place of stay for the purpose of police reporting.

This Residential Permit must be surrendered to the Immigration Authorities at the check post of exit at the time of departure. Further, except those who are granted visa with the endorsement "Exempted from Police Reporting" (EPR Visa), Pak nationals entering India on a police reporting Visa (PRV) must also report their arrival and intended departure at each place of stay as permitted in the visa within 24 hours to the concerned FRRO/FRO authorities or the nearest police station.

Medborgarskap

På webbplatsen Government of India – Foreigners Division finns [utdrag ur Citizenship Act kring medborgarskap](#).

Som framgår under rubrik Lagar, förordningar etc ovan, är enligt 5(1)(c) i Citizenship Act, 1955 (inkl. ändringar) en person som är gift med en indisk medborgare och som har varit fast bosatt i Indien i sju år, men inte som "illegal invandrare", berättigad att ansöka om indiskt medborgarskap.

Den indiska konstitutionen tillåter emellertid inte dubbla medborgarskap. Personer av indiskt ursprung kan registreras för ett Overseas Citizenship of India (OCI) Cardholder. Detta gäller även make/maka till en indisk medborgare, dock inte personer av pakistanskt ursprung. [BOI ger följande information kring OCI](#):

- (a) The following categories of persons (except Pakistan and Bangladesh) are eligible to apply under OCI scheme:
1. Who is a citizen of another country, but was a citizen of India at the time of, or at any time after, the commencement of the constitution; or
 2. Who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the constitution; or
 3. Who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or
 4. Who is a child or a grand-child or a great grandchild of such a citizen; or
- (b) A person, who is minor child of a person mentioned in clause (a); or (c) A person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or (d) Spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A, Citizenship Act 1955 and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section: Provided that no person, who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify,

shall be eligible for the registration as Overseas Citizen of India Cardholder.

Interreligiösa äktenskap – lagstiftning, myndighetsskydd, attityder

Interreligiösa äktenskap är lagliga i Indien men flera rapporter pekar på att äktenskap mellan par av olika religion kan medföra svårigheter/problem av olika slag, i synnerhet tycks detta vara fallet på landsbygden. Äktenskap mellan hinduer och muslimer förefaller vara mindre socialt accepterade än andra interreligiösa äktenskap. Tillgång till myndighetsskydd tycks variera geografiskt:

US Department of State International Religious Freedom Report 2013 (2014) noterade att:

The Special Marriage Act (SMA) grants interreligious couples the right to marry without a religious conversion. There were, however, reports that many couples faced administrative difficulties in doing so and harassment by local officials during the registration process. /.../ Additionally, Hindus, Buddhists, Sikhs, or Jains who marry outside their religions face the possibility of losing their property inheritance rights.

En rapport från kanadensiska IRB (2013) angående hedersmord skriver att:
Honour crimes may occur as a result of: inter-caste marriages (...)
inter-religious marriages...

I en tidigare rapport från kanadensiska IRB (2012) rörande citeras en extern källa enligt följande:

...marriages between Hindus and Muslims would face the most opposition
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... Hindus from higher castes were likely to experience more opposition to an inter-religious marriage than Hindus from lower castes

Enligt IRB-rapporten (2012) är dock våld mot blandäktenskap inte särskilt vanligt:

While it isn't the norm for inter-faith couples to be subject to violence, it does happen. The threat of violence would exist, in the vast majority of cases, from the families involved. Only in certain rural areas would individuals outside the family take an interest in an inter-faith marriage and take any action.

Visst myndighetsskydd finns att tillgå enligt IRB-rapporten (2012):

...some state governments offer protection to inter-faith couples; couples can request protection from the state court, and often police protection is provided to the couples

I en sammanställning (2012) av australiensiska Refugee Review Tribunal (RRT) angående blandäktenskap rapporteras kring lagen och blandäktenskap:

India is officially a secular and multi-ethnic country. Inter-religious marriage is legal in India.

(s. 5)

A marriage between an Indian national and a foreigner is governed under the Foreign Marriage Act, which was last revised in 1969. The Act “established that a marriage may be solemnized in a foreign country between an Indian and a foreigner as well as two Indians, regardless of their religion or personal laws.” This Act allows a marriage to be solemnised in a foreign nation under any law, including that nation’s local law, and registered under the Foreign Marriage Act. The marriage is valid, provided that neither party has a living spouse, neither is of unsound mind, the bride is a minimum of 18 years of age and the groom 21 years of age, and provided that the marriage does not lie within the Act’s definition of a prohibited relationship (i.e. a marriage between first cousins).²⁴⁶

(s. 32)

I RRT-rapporten (2012) finns även några avsnitt som berör den samhälleliga attityden och bemötande till blandäktenskap, bland annat följande:

Social Attitudes

Intermarriage between Hindus, Sikhs and Jains appears to be more generally accepted than intermarriage between members of these religions and Christians, Jews or Muslims.^{77 78 79} A page on the Indiana University Bloomington website states that intermarriage is often allowed between Sikhs and Hindus in particular, and that Jain communities have sometimes been willing to accept intermarriage with Hindus.⁸⁰

The following comment from a United Nations Development Programme discussion forum is attributed to a professor from Allahabad, Uttar Pradesh, and relates to India generally:

By and large, inter-caste and inter-religious marriages are discouraged, and those who have asserted their free choice along these lines recount their experiences of severe friction in and disruption of intra-family relations on account of it.⁸¹

Dr Lizy James is a social scientist who has studied and worked as a senior lecturer in Kerala. James’ work has focused on family structures.⁸² Writing on Indian family structures, James states that society “seldom approves” of interreligious marriage.⁸³

(s. 10)

I RRT-rapporten (2012) beskrivs även vilket myndighetsskydd ett interreligiöst par kan förvänta sig, nedan följer ett utdrag:

State Protection

Inter-religious couples fearing harm from non-state actors might appeal to the police for assistance, however, there are mixed reports regarding the effectiveness of police protection. The 2008 UK Home Office Operational Guidance Note – India explained that the governments of India’s 28 states and seven union territories have primary responsibility for maintaining law and order, with the central government providing guidance and support. Some members of the security forces have reportedly committed human rights abuses, and corruption in the police force exists at all levels. The note states that police have acted with relative impunity, and are rarely held accountable for illegal actions.¹²⁹ Police protection then, may be uneven both across the country and within states. There are reports of police making arrests in relation to the deaths of Hindu-Muslim couples in Fatehabad district, Haryana¹³⁰ and Meerut city, Uttar Pradesh¹³¹ and in relation to the murder of Hindu women who had eloped with Muslim men in Uttar Pradesh.¹³² In 2009, Uttar Pradesh police also charged an entire khap panchayat with abetting suicide; the khap had ordered a Hindu-Muslim couple to “annul their marriage or face death”.¹³³ A Mumbai couple were reportedly sentenced to life imprisonment for killing their daughter, after she fell in love with a Hindu man.¹³⁴ (s. 17)

Denna sammanställning av information/länkar är baserad på informationssökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

Källförteckning

Länkar hämtade 2015-09-21

BOI - Bureau of Immigration, Government of India, *Entry Visa (X)*, [odaterad], <http://boi.gov.in/content/entry-visa-x>

BOI - Bureau of Immigration, Government of India, *Registration and Visa Extension - Special Categories for Registration - Pakistani Nationals*, [odaterad], <http://www.boi.gov.in/content/pakistani-nationals>

BOI - Bureau of Immigration, Government of India, *General Instructions for Registration by the Foreigners*, [odaterad], http://www.boi.gov.in/sites/default/files/ForeignD-FRRO_version223.6.11.pdf

BOI - Bureau of Immigration, Government of India, *Information for Foreigners Possessing Entry (X) Visa*, [odaterad], <http://boi.gov.in/content/information-foreigners-possessing-entry-x-visa-0>

BOI - Bureau of Immigration, Government of India, *Overseas Citizen of India (OCI) Cardholder*, [odaterad], <http://boi.gov.in/content/overseas-citizen-india-oci-cardholder>

IRB - Immigration and Refugee Board of Canada, *India: Honour crimes, including their prevalence in both rural and urban areas; government protection and services offered to victims of honour crimes (2009-April 2013)*, 2013-05-09, IND104370.E, <http://www.refworld.org/docid/51ab3f114.html>

IRB - Immigration and Refugee Board of Canada, *India: Situation of inter-religious couples from both urban and rural locations, including societal attitudes, treatment by government authorities and the treatment of their children (2005-April 2012)*, 2012-05-11, <http://www.refworld.org/docid/50b4a36c2.html>

Ministry of Home Affairs, Government of India, *Acts, rules and regulations pertaining to Foreigners Division*, [odaterad], <http://mha1.nic.in/foreigndiv/actrule.html>

Ministry of Home Affairs, Government of India, *Citizenship Act, 1955 [as amended]*, [odaterad], http://mha.nic.in/sites/upload_files/mha/files/pdf/ic_act55.pdf

Ministry of Home Affairs, Government of India, *Citizenship Rules, 2009*, 2009-02-25, http://mha1.nic.in/pdfs/Citi_Rule-2009.pdf

Ministry of Home Affairs, Government of India, *Extracts from the Citizenship Act, 1955*, [odaterad], <http://indiancitizenshiponline.nic.in/citizenshipact1.htm>

RRT - Refugee Review Tribunal (Australien), *Mixed Marriage in India*, June 2012, <http://www.refworld.org/docid/51f628114.html> (hämtad 2015-09-14)

US Department of State, *2013 Report on International Religious Freedom - India*, 2014-07-28, <http://www.refworld.org/docid/53d907685.html>