IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 177

Originating Application No 891 of 2022

Between

(1) Fu Zhihui Alvin
(2) Authorities Services Pte Ltd

… *Applicants*

And

Accounting and Corporate Regulatory Authority

… *Respondent*

GROUNDS OF DECISION

[Companies — Restoration of struck-off company]

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Fu Zhihui Alvin and another
v
Accounting and Corporate Regulatory Authority

[2023] SGHC 177

General Division of the High Court — Originating Application No 891 of 2022
Lee Seiu Kin J
17, 25 January 2023

26 June 2023

Lee Seiu Kin J:

Introduction

1 In this application, the first applicant, Mr Fu Zhihui Alvin ("Mr Fu"), sought to have a company, Authorities Services Pte Ltd ("ASPL"), which he had previously applied to strike off the register of companies (the "Register"), restored to the Register (the "Application"). The purpose of restoration was to enable Mr Fu, the sole director and shareholder of ASPL, to use the company as a vehicle for investments. After considering the arguments put before me, I found that Mr Fu had *locus standi* to bring this Application and that it was just to order the restoration. Therefore, I granted the application.

Facts

The parties

2 The first applicant was Mr Fu, a Singaporean, who was at all times the sole director and shareholder of ASPL.[1]

3 The second applicant, ASPL, was a company incorporated by Mr Fu in Singapore on 16 October 2015. Mr Fu set up ASPL to provide consultancy services.[2]

4 The respondent was the Accounting and Corporate Regulatory Authority ("ACRA").

Background

5 On 8 February 2011, Mr Fu established a company, AF Holdings Pte Ltd ("AFH"). AFH provided, and continues to provide, real estate agency services.[3] On 16 October 2015, Mr Fu incorporated ASPL to provide consultancy services under a separate business.

6 In or around December 2018, Mr Fu decided to focus on his real estate agency business in AFH and cease offering consultancy services through ASPL. Since Mr Fu no longer required ASPL, in or around December 2018, Mr Fu, in his capacity as director of ASPL, applied to ACRA under s 344A of the Companies Act (Cap 50, 2006 Rev Ed) for ASPL to be struck off.[4] Pursuant to

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1 Mr Fu Zhihui Alvin's affidavit dd 28 December 2022 at para 8.

2 Mr Fu Zhihui Alvin's affidavit dd 28 December 2022 at paras 6–7.

3 Mr Fu Zhihui Alvin's affidavit dd 28 December 2022 at para 5.

4 Mr Fu Zhihui Alvin's affidavit dd 28 December 2022 at paras 10–11.

that application, on 7 March 2019, ASPL was struck off the Register.[5] At the time of striking off, ASPL had no assets and no liabilities.[6] Since ASPL had been struck off the Register at the time of this Application, it cannot be an applicant in this action: see s 2(1) of the Interpretation Act 1965 (2020 Rev Ed) and *Re Haeusler, Thomas* [2021] 4 SLR 1407 at [35]. Mr Fu is therefore the sole applicant.

7 On 29 December 2022, Mr Fu filed the present Application for ASPL to be restored to the Register, pursuant to s 344(5) of the Companies Act 1967 (2020 Rev Ed)(the "Companies Act").[7] This is because Mr Fu sought to use ASPL as a vehicle to make investments,[8] and claimed that restoring ASPL to the Register required less time and lower costs than incorporating a new company.[9]

The parties' cases

8 Mr Fu relied on the framework for restoration of a company to the Register set out *in Re Asia Petan Organisation Pte Ltd* [2018] 3 SLR 435 ("*Re Asia Petan*") at [31].

9 Mr Fu argued that he had *locus standi* to make the Application, notwithstanding that he had applied for ASPL to be struck off the Register. Mr Fu relied on cases including *Ganesh Paulraj v Avantgarde Shipping Pte*

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5 Applicants' written submissions dd 13 January 2023 at para 5.

6 Mr Fu Zhihui Alvin's affidavit dd 28 December 2022 at paras 13 and 15.

7 Applicants' written submissions dd 13 January 2023 at para 1.

8 Mr Fu Zhihui Alvin's affidavit dd 28 December 2022 at paras 18–20; Applicants' written submissions dd 13 January 2023 at para 6.

9 Mr Fu Zhihui Alvin's affidavit dd 28 December 2022 at para 19.

Ltd [2019] 4 SLR 617 ("*Ganesh*") and Re *Blenheim Leisure (Restaurants) Ltd (No 2)* [2000] BCC 821 ("*Re Blenheim*"). Mr Fu submitted that he was "the sole shareholder of ASPL and [had] an interest in restoring the company so that it may be used to make investments".[10]

10 Moreover, Mr Fu argued that it would be "just" to restore ASPL to the Register because Mr Fu may thereby use ASPL to carry out investments, and this would confer Mr Fu the practicable benefit of saved time and costs of incorporating a new company.[11] Mr Fu claimed that ASPL had not been involved in any disputes with other parties and had no financial or tax problems.[12] Additionally, there would be no prejudice to any party. Mr Fu asserted that "ASPL ha[d] no debts or liabilities, and there [we]re no unresolved claims or pending proceedings against it".[13] He also "agreed to make any undertakings required, including bringing ASPL's annual returns up to date."[14]

11 This Application was unopposed. ACRA had been informed of the application to restore but did not participate in the present proceedings.[15]

Issues to be determined

12 In making my decision, I considered the following issues:

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10 Applicants' written submissions dd 13 January 2023 at para 16.

11 Applicants' written submissions dd 13 January 2023 at para 18.

12 Applicants' written submissions dd 13 January 2023 at para 19; Mr Fu Zhihui Alvin's affidavit dd 28 December 2022 at para 19.

13 Applicants' written submissions dd 13 January 2023 at para 19.

14 Applicants' written submissions dd 13 January 2023 at para 19.

15 Applicants' written submissions dd 13 January 2023 at para 3 and Annex 1.

(a) Whether Mr Fu, notwithstanding that he was the party who applied for ASPL to be struck off, had sufficient standing to make the present application.

(b) Whether any practicable benefit would arise from the restoration of ASPL to the Register.

The law governing restoration

13 Section 344(5) of the Companies Act governs the restoration of companies struck off the Register, and it is reproduced below:

> If *any person* feels *aggrieved by the name of the company having been struck off the [R]egister*, the Court, on an application made by the person at any time within 6 years after the name of the company has been so struck off may, *if satisfied* that the company was, at the time of the striking off, carrying on business or in operation or otherwise *that it is just that the name of the company be restored to the [R]egister*, order the name of the company to be restored to the [R]egister …
>
> [emphasis added]

It is part of s 344, which empowers the Registrar of Companies (the "Registrar") to strike off a company which the Registrar has reason to believe is no longer carrying on business or not in operation (*Re Asia Petan* at [15]).

14 Conversely, s 344A of the Companies Act came into force on 3 January 2016 and empowers the Registrar to strike off a company on the application of the company. Section 344A was the legal provision on which basis Mr Fu had applied to strike off ASPL. In *Re Asia Petan*, at [16], the Honourable Judicial Commissioner Audrey Lim (as she then was) held that s 344(5) of the Companies Act is a general provision empowering the court to restore a company that was previously struck off by virtue of its own

application, notwithstanding the fact that s 344A of the Companies Act does not contain a provision similar to that in s 344(5) of the Companies Act to restore a company. Mr Fu was therefore able to rely on s 344(5) of the Companies Act in this case, since it involved ASPL, a company struck off under s 344A of the Companies Act.

15 In order to restore a defunct company under s 344(5) of the Companies Act, the statute provides that an applicant must satisfy three requirements:

(a) First, the applicant must be an "aggrieved person" (the "*Locus Standi* Requirement").

(b) Second, the application must be made within six years after the defunct company was struck off. The Application satisfied this requirement.

(c) Third, the court must be satisfied that:

(i) at the time of striking off, the company was carrying on business or in operation; or

(ii) it is just that the name of the company be restored to the Register (the "Just Requirement").

16 In *Re Asia Petan*, Lim JC set out several principles for the determination of whether the *Locus Standi* Requirement and the Just Requirement (collectively, the "Requirements") were satisfied (*Re Asia Petan* at [31]). Subsequently, in *Ganesh*, the Honourable Justice Aedit Abdullah agreed with these principles and provided further guidance (*Ganesh* at [13]). I summarise and apply these principles when considering each Requirement, in turn.

The Locus Standi Requirement

The law

17 To demonstrate *locus standi*, an applicant "must demonstrate some proprietary or pecuniary interest arising from the company's restoration". Lim JC stressed that such interest "*need not be firmly established or highly likely to prevail*, but it must not be merely shadowy" [emphasis added] (*Re Asia Petan* at [31]).

18 Subsequently, in *Ganesh*, Abdullah J held that the *Locus Standi* Requirement would be fulfilled where the application was made by a director of a company who may have *possible outstanding claims*, and that whether or not such an action would be successful was not relevant so long as there was potential for some recovery for the company. This was the case on the facts in *Ganesh,* where the applicant was a director of the struck-off company and sought to restore the company to pursue a contractual claim owed by the respondent to the case, who purportedly owed an outstanding sum to the company. Further, Abdullah J held that a shareholder of a company (corporate or otherwise) would have the requisite pecuniary interest in the restoration of a company (*Ganesh* at [14]–[15], [23]).

19 However, in *Ganesh*, Abdullah J also widened the test for establishing *locus standi*. He opined that "the test for standing need not … be as narrow as the *Re Asia Petan* formulation may be perceived to be". This meant that even if there were no separately demonstrable pecuniary interest, a director of a struck-off company, by his position alone, would have sufficient connection and proximity to the struck off-company that would independently furnish some basis for standing as an applicant under s 344(5) of the Companies Act (subject

to the establishment of a practicable benefit accruing under the Just Requirement) (*Ganesh* at [16]).

20 Abdullah J's liberal approach towards the *Locus Standi* Requirement was founded on the objective of the *Locus Standi* Requirement – *ie,* to limit s 344(5) of the Companies Act applications to those with some direct and tangible interest in the outcome and, ultimately, to *sieve out unmeritorious applications.* He aptly stated that "[t]his is to limit the field of potential applicants for restoration; so that those merely officious or opportunistic, without any real connection to the company, could not bring themselves within the statute". Hence, although *Re Asia Petan* cast the requirement of interest in a particular manner (*ie,* by way of potential injury, harm or detriment), the rationale of sieving out unmeritorious applications offered robust guidance on standing (*Ganesh* at [18]–[19]). Abdullah J also found that this rationale was evident in the English authorities on the restoration of a company, pursuant to s 352 of the Companies Act 1948 (c 38) (UK) (the "Companies Act 1948"), such as *In re Wood and Martin (Bricklaying Contractors) Ltd* [1971] 1 WLR 293 and *In re Roehampton Swimming Pool Ltd* [1968] 1 WLR 1693. Section 352 of the Companies Act 1948 gives the court the power to declare that the dissolution of a company is void, on the application of the company liquidator or any other person "who appears to the court to be interested" (*Ganesh* at [19]–[20]). He concluded that in the English authorities, the English Courts had the objective of giving a realistic and practical circumference to standing and to exclude the merely curious or concerned.

The decision

21 In the present case, the first question was whether Mr Fu constituted an "aggrieved person" and therefore satisfied the *Locus Standi* Requirement,

notwithstanding the fact that he had applied on ASPL's behalf to strike off ASPL.

22 Counsel for Mr Fu referred to the facts of *Ganesh*. In *Ganesh*, the applicant and two others were at all material times directors of the company (*Ganesh* at [2]). As the company was deemed redundant at the time, one of the directors (who was not the applicant in that case) suggested that the company be shut down. The applicant and the other director agreed to the suggestion, and an application to have the company struck off the Register was made thereafter (*Ganesh* at [4]). Even though the applicant seeking the restoration of the company had originally agreed for the company to be struck off, which led to the company being struck off the Register, Abdullah J granted a restoration of the company under s 344(5) of the Companies Act. Abdullah J expressly stated that "[t]he Applicant's participation in the striking off does not remove his standing" (*Ganesh* at [29]). Counsel for Mr Fu submitted that the facts of *Ganesh* support a finding that Mr Fu has *locus standi*.

23 I agreed with the submission of Mr Fu's counsel that the facts of *Ganesh* were akin to those in the present case. Even though it was unclear whether the applicant for restoration in *Ganesh* was the same person who applied for the company to be struck off, it was clear that the applicant had given his approval for the company to be struck off, which eventually led to the company being struck off the Register. In my view, there was no material difference between a person who had applied on the company's behalf for the company to be struck off (as was the case here) and a person who participated in having the company be struck off the Register (as was the case in *Ganesh*).

24 Further, even though the wording of the statute (*ie,* that the applicant must "feel aggrieved by the name of the company having been struck off the [R]egister") suggests that the applicant cannot be aggrieved by its own previous actions of striking off the company, the case law appears to have taken a wider view. In *Arnold World Trading Pty Ltd v ACN 133 427 335 Pty Limited* [2010] NSWSC 1369 at [43], the Supreme Court of New South Wales (Equity Division) held that whether an applicant is a "person aggrieved" by the deregistration of a company is "considered by reference to legal rights and legal interests" (in the context of s 601AH(2)(a)(i) of the Australian Corporations Act 2011 (Cth)). This was affirmed as a statement of principle in *Re Asia Petan* (at [30]). There, the High Court interpreted the statement to mean "the applicant's interest must have been affected by the dissolution of the company, in the sense of *some right of value or potential value having gone out of existence*" [emphasis added]. According to s 344A(2) of the Companies Act, an application by the company to strike off its name must be made "on the company's behalf by its directors or by a majority of them". It is clear that a director would lose "some right of value or potential value" if his or her company was struck out. Lim JC had also emphasised that "s 344(5) of the [Companies] Act should be interpreted broadly" (*Re Asia Petan* at [31]). Subsequently, as elaborated above, the *Locus Standi* Requirement was widened in *Ganesh*, where the High Court made clear that a director of a struck-off company, solely by virtue of his position *as a director*, would have sufficient connection and proximity to the struck off-company. For completeness, I noted that in *Re Asia Petan* (at [34]), the respondent objecting to the restoration application submitted that the applicant for restoration, a director of the company, had knowledge of the other director's application to strike the company off, but did not raise any objections at the material time. In my view, Lim JC did not place weight on this argument because the evidence showed that there was, at best, a discussion about

discontinuing the company; however, no decision was reached (*Re Asia Petan* at [35]). Therefore, it was apparent that the line of authorities on restoration of a company has taken a broad view of the *Locus Standi* Requirement.

25 Further, there was a good policy reason to take a wider view. I return to the underlying rationale of the *Locus Standi* Requirement: if the court takes too narrow a view on *locus standi*, it may inadvertently cut off otherwise meritorious cases. In *Re Asia Petan,* when deliberating whether s 344(5) of the Companies Act applied to a company struck off on its own application under s 344A(1) of the Companies Act, Lim JC considered that, as a matter of principle, there could be *good* reasons why a company would seek to restore itself to the Register even if it was previously struck off on its own application (*Re Asia Petan* at [21]). She provided two examples. First, a company which had ceased to operate may be struck off on its own application, but if it subsequently transpired that a director of the company had breached its duties to the company, the company may need to commence an action, in its own name, against that director. Second, a company may have been struck off by mistake or fraud on the part of one of its directors or based on a material non-disclosure which affected the company's decision to apply to be struck off. In my view, these illustrations could be applied to the more specific scenario where *the same director applied to strike off and restore* the company. Notwithstanding the fact that a director had applied on behalf of the company to strike off the company, there may be good reasons to let the same director apply to restore the company to pursue claims against another errant director.

26 Therefore, I held that Mr Fu had established the *Locus Standi* Requirement.

The Just Requirement

The law

27 To fulfil the Just Requirement, the court should have regard to all the circumstances of the case, including but not limited to: "(a) the purpose of restoring the company; (b) whether there would be any practicable benefit arising from the restoration; and (c) whether there would be prejudice to any persons" (*Re Asia Petan* at [31]). Finally, "if the court were so satisfied, it should order a restoration unless there are exceptional countervailing circumstances" (*Re Asia Petan* at [31]). Subsequently, in *Ganesh*, Abdullah J clarified that these factors are not exhaustive and conclusive (*Ganesh* at [13]).

28 In *Re Asia Petan*, an application for restoration was brought by a former shareholder and director of a company that had been struck off. The purpose of the application was to commence a derivative action in the company's name against another director under s 216A of the Companies Act for breach of that other director's fiduciary duties as a director (*Re Asia Petan* at [4]). Lim JC found that any delay in bringing the restoration application did not cause prejudice to the allegedly errant director and that there was no other evidence of any prejudice or detriment that a third party might suffer if the company were restored (*Re Asia Petan* at [37]). Therefore, considering all the circumstances of the case, she found it just to order the restoration of the company and allowed the application.

29 Subsequently, in the case of *Ganesh*, the applicant's company ("Tuff") and the respondent were the two shareholders of the company that had been struck off the Register (the "Company") (*Ganesh* at [2]). Before the Company was struck off, the respondent entered into a contract with the Company for the

provision of integrated project management services (the "Integrated Project Management Services Contract"). According to the applicant, the Company then entered into a back-to-back contract with Tuff for the same scope of work set out in the Integrated Project Management Services Contract. While the Company was the contracting party under the Integrated Project Management Services Contract, Tuff performed the actual work and received payment from the respondent. As a result of the apparent redundancy, an application was made for the Company to be struck off the Register. After the Company was struck off, it transpired that there remained an outstanding sum purportedly owed by the respondent to Tuff. According to the applicant, restoration of the Company was necessary to vindicate the applicant's contractual claim (*Ganesh* at [4]).

30 The High Court found that the purpose of the Company's restoration was to enable the pursuit of the contractual claim against the respondent. This was held to confer sufficient practical benefit, even if the contractual claim were unmeritorious, so long as it was not hopeless or very likely to fail (*Ganesh* at [24]–[25]). Further, the respondent's exposure to the contractual claim would not count as relevant prejudice. The claim arose independently and did not lead to any new consequences for the respondent, and the respondent would have had to face the claim had the Company continued its existence (*Ganesh* at [27]). Additionally, the fact that the applicant had himself sought to strike off the Company in the first place did not negate any practical benefit from the restoration (*Ganesh* at [29]). Accordingly, the court granted the order sought by the applicant (*Ganesh* at [32]).

31 Mr Fu's counsel also referred to the case of *Re Blenheim*. *Re Blenheim* concerned a members' application for the restoration of a company under s 635(2B) of the UK Companies Act 1985, which is worded similarly to

s 344(5) of the Companies Act. The company had entered into agreements with the second respondent for the rent of three clubs. Subsequently, the company entered into agreements with a third company for the rent of the same three clubs for a higher rent (*Re Blenheim* at 821). Thereafter, on the mistaken advice of auditors, who had wrongly believed that the company had no assets, the same applicants for restoration made the application for striking off (*Re Blenheim* at 833). When the applicants later made their application for restoration, the court held that it was just to allow the company to be restored to the companies register. The most crucial factor to the court in arriving at that decision was the prospect of the company being solvent (although this was a highly speculative prospect, albeit not a fanciful one), which meant that *restoration could produce something of value to the applicants* (*ie,* the company's shareholders) in the form of monies allegedly owed through the agreements (*Re Blenheim* at 834). The court also considered that the prejudice suffered by the respondents (*ie,* delays resulting from the application) did not outweigh the prospects of value being established, taking into account the sums owed by the company to the respondents, and the sums owed to the company for rents in the later arrangements (*Re Blenheim* at 835–836).

The decision

32 The core issue, in this case, was whether, having regard to all the circumstances of the case, it was just for ASPL to be restored to the Register.

33 In *Ganesh* and *Re Blenheim*, the courts considered it just to restore the respective companies primarily to retain some benefit or value that would otherwise have been lost. In *Ganesh*, the practicable benefit was the possibility of claiming the debt owed to the Company. In *Re Blenheim*, the benefit was the prospect of preserving value arising from the company's agreements. Each of

these cases presented a good basis for restoration. However, the question here was: what value was preserved by ordering the restoration of ASPL? In my judgment, the present facts crossed the boundary of establishing the Just Requirement, if only barely so.

Practicable benefit

34 In *Re Asia Petan* (at [31]), Lim JC did not specify that the practicable benefit arising from the restoration must *accrue to the company* being restored. In my view, there is nothing to preclude a benefit to be enjoyed by Mr Fu in the analysis of practicable benefit arising from the restoration of ASPL. In my view, the restoration of ASPL would have the following practicable benefits: Mr Fu has given affidavit evidence that he intends to use ASPL as a vehicle to carry out various investments.[16] Allowing a restoration of ASPL, as opposed to having to incorporate a new company, would likely confer Mr Fu the tangible benefit of time and cost savings. Consequently, the saved time would enable Mr Fu to commence business activity earlier. Additionally, the practicable benefits could extend beyond Mr Fu: if ASPL succeeds in its investments, it would have the potential to add value to the local economy and generate employment.

35 My decision was guided in part by the liberal approach taken in the line of Singapore authorities. In *Re Asia Petan* (at [27]), Lim JC cited Lord Hoffmann of Chedworth's statement in *Re Forte's (Manufacturing) Ltd Stanhope Pension Trust Ltd v Registrar of Companies* [1994] BCC 84 ("*Re Forte's*") at 90A–90B that "the interest of an applicant under s 651 [of the UK Companies Act 1985] in having the company revived does not have to be firmly established or highly likely to prevail. *It is sufficient that it is not 'merely*

[16] Mr Fu Zhihui Alvin's affidavit dd 28 December 2022 at para 18.

shadowy"'[emphasis added]. Lim JC found that the principle enunciated therein applied to applications under s 344(5) of the Companies Act. Therefore, only a more than "merely shadowy" threshold is required to establish the Just Requirement. Further, in *Ganesh*, Abdullah J held that the purpose of pursuing a contractual claim against the respondent in that case would confer sufficient practical benefit, even if the contractual claim were unmeritorious, so long as the claim was not hopeless (*Ganesh* at [24]). Therefore, it appeared that a liberal view was taken in the case law when applying the Just Requirement.

36 Further, I was satisfied that there are safeguards to prevent applicants from frivolously and haphazardly applying to strike a company off the Register and subsequently applying to have it restored. First, the reduced limitation period for restoration under s 344(5) of the Companies Act provides a safeguard. Prior to the Companies (Amendment) Act 2014 ("Amd Act 2014") coming into force on 3 January 2016, a company could be restored to the Register within 15 years if the court is satisfied that the company had been carrying on its business or remained in operation or otherwise that it was just for the company to be restored to the Register: see the Ministry of Finance's Consultation Paper in June 2011 on the Report of the Steering Committee for Review of the Companies Act (the "2011 Consultation Paper") at ch 5 [75]. However, s 344(5) of the Companies Act has since been amended by the Amd Act 2014, according to which an applicant must make a restoration application *within six years* after the name of the company has been struck off the Register. This would prevent frivolous applications made to restore a company long after the company has been struck off the Register. It would also shorten the waiting time for any interested person to use an identical name of the struck-off company to register a new entity: see the 2011 Consultation Paper at ch 5 [75].

37 Second, under s 344(5) of the Companies Act, anyone who wants to restore a company has to engage the services of a lawyer and file an application to court, which may be costly and time consuming. The Steering Committee in the 2011 Consultation Paper recognised that "[h]aving to apply to the court for the restoration of a company is a form of deterrence for frivolous applications" (2011 Consultation Paper at ch 5 [78]–[79]); they also pointed out that the operation of this safeguard was exemplified by the limited number of companies that had previously applied to be restored to the Register.

Prejudice to third parties

38 Finally, I was satisfied that the restoration of ASPL would cause no prejudice to any third party. Furthermore, ACRA made no objections to the present application. I also considered that Mr Fu had agreed to make any undertakings to bear the costs incurred by ACRA for the purposes of restoring ASPL to the Register.[17]

39 In the circumstances, I was satisfied that it was just for ASPL to be restored to the Register and found that there were no exceptional countervailing circumstances to decide otherwise.

Conclusion

40 Accordingly, I granted the order sought by Mr Fu.

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17 Mr Fu Zhihui Alvin's affidavit dd 28 December 2022 at para 23(b).

Lee Seiu Kin J
Judge of the High Court

Foo Chuan Min Jerald and Luis Inaki Duhart Gonzalez (Selvam LLC) for the applicant.
