

Press Releases

LCQ2: Applications for naturalisation as Chinese nationals

Following is a reply by the Secretary for Security, Mr Lai Tung-kwok, to a question by the Hon Claudia Mo in the Legislative Council today (December 12):

Question:

Some organisations that offer assistance to residents from the ethnic minorities have relayed to me that the Immigration Department (ImmD) always finds fault with ethnic minority residents (especially the Southeast Asians, South Asians and Africans who have dark skin colour) applying for naturalisation as Chinese nationals, and the process and criteria for vetting and approving such applications lack transparency. These ethnic minority residents have been residing in Hong Kong for a long time and regard Hong Kong as their home, but their applications for naturalisation as Chinese nationals have been refused. They are therefore not eligible for applying for the Hong Kong Special Administrative Region (HKSAR) passports as well. Such a situation not only undermines their sense of belonging to Hong Kong, but also very often causes them inconvenience when they go through immigration clearance while travelling, working or studying abroad. Also, they may be unable to receive assistance or protection from the Chinese consulates in the event of natural or man-made disasters encountered abroad. In this connection, will the Government inform this Council:

(a) whether ImmD has formulated internal guidelines on vetting and approving applications for naturalisation as Chinese nationals to ensure that applicants of different ethnicity are treated fairly; if it has, of the details; if not, the reasons for that; whether ImmD will, when vetting and approving applications for naturalisation as Chinese nationals, take into consideration if the applicants are stateless persons, if they are non-ethnic Chinese children lawfully adopted by ethnic Chinese Hong Kong residents, as well as if they are of Chinese descent;

(b) of the specific details of the rejected applications for naturalisation as Chinese nationals by non-ethnic Chinese Hong Kong residents each year since the establishment of the Hong Kong Special Administrative Region, including the number of applications received by ImmD and the number rejected (with a breakdown by the ethnicity of the applicant and the reason for rejecting the application); and

(c) given that section 5(1)(b) of the Chinese Nationality (Miscellaneous Provisions) Ordinance stipulates that "any decision to approve or refuse the nationality application in the exercise of the discretion there shall be no need to assign any reason for the decision", whether the authorities will consider amending the provision, providing the applicants with the reasons for rejecting their applications, as well as putting in place an appeal mechanism; if they will, of the details; if not, the reasons for that?

Reply:

President,

The reply is as follows:

(a) According to Article 18 of and Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People's

Republic of China (HKSAR), the Nationality Law of the People's Republic of China (CNL) shall be applied in the HKSAR from July 1, 1997. The Explanations of Some Questions by the Standing Committee of the National People's Congress Concerning the Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region (Explanations) have been endorsed by the Standing Committee of the National People's Congress and the Government of HKSAR is authorised to designate its Immigration Department (ImmD) to handle applications related to Chinese nationality in the HKSAR in accordance with the CNL and the Explanations. Furthermore, the Government of HKSAR enacted the Chinese Nationality (Miscellaneous Provisions) Ordinance (Chapter 540) in 1997 to stipulate the implementation details of naturalisation, form of application, charges, etc.

Pursuant to Article 7 of the CNL, foreign nationals or stateless persons who are willing to abide by China's Constitution and laws and who meet one of the following conditions may be naturalised upon approval of their applications:

- (1) they are near relatives of Chinese nationals;
- (2) they have settled in China; or
- (3) they have other legitimate reasons.

Article 8 of the CNL stipulates that any person who applies for naturalisation as a Chinese national shall acquire Chinese nationality upon approval of his application; a person whose application for naturalisation as a Chinese national has been approved shall not retain foreign nationality.

ImmD will consider each application for naturalisation as a Chinese national on its own merits and will in general give consideration to the following factors:

- * whether the applicant has a near relative who is a Chinese national having the right of abode in Hong Kong;
- * whether the applicant has the right of abode in Hong Kong;
- * whether the applicant's habitual residence is in Hong Kong;
- * whether the principal members of the applicant's family (spouse and minor children) are in Hong Kong;
- * whether the applicant has a reasonable income to support himself/herself and his/her family;
- * whether the applicant has paid taxes in accordance with the law;
- * whether the applicant is of good character and sound mind;
- * whether the applicant has sufficient knowledge of the Chinese language;
- * whether the applicant intends to continue to live in Hong Kong in case the naturalisation application is approved; and
- * whether there are other legitimate reasons to support the application.

Besides, as stated in section 5(1)(a) of the Chinese Nationality (Miscellaneous Provisions) Ordinance, where in connection with any nationality application any discretion may be exercised under or pursuant to any of the provisions of the CNL, as implemented in the HKSAR in accordance with the Explanations, the discretion shall be exercised without regard to the race, colour or religion of any person who may be affected by its exercise. This

provision applies to the naturalisation applications handled by ImmD, including those from stateless persons, non-ethnic Chinese children being legally adopted by Hong Kong ethnic Chinese couples, and non-ethnic Chinese residents.

(b) From the establishment of the HKSAR (i.e. July 1997) to November 2012, ImmD has received 15,518 applications for naturalisation as Chinese nationals, of which 12,658 were approved, 1,293 not approved, and 193 withdrawn. The yearly breakdown is in Table I.

The original nationality of applicants whose naturalisation applications were approved from July 1997 to November 2012 is mainly Pakistani, Indonesian, Indian, Vietnamese and Filipino. Detailed application and approval figures are in Table II.

ImmD does not maintain statistics on refusal reasons.

(c) Section 5(1)(b) of the Chinese Nationality (Miscellaneous Provisions) Ordinance applies only to decisions in the exercise of discretion. In exercising discretion to handle applications for naturalisation as a Chinese national, ImmD often needs to consider information such as whether the applicants are of good character. Therefore, it is not appropriate to disclose the reasons behind the decision. The decisions made after considering the above factors are in the exercise of discretion, rather than findings of the law or facts. If an appeal mechanism is set up for this kind of decisions, the final decision will be made by the appellate authority instead of ImmD, which is designated by the Government of HKSAR as authorised by the Explanations. Moreover, pursuant to section 5(2) of the Ordinance, nothing in this section affects the jurisdiction of any court to entertain proceedings of any description concerning the rights of any person under the CNL.

Applicants who are not satisfied with the outcome of the applications may request ImmD in writing to reconsider their applications. All reconsiderations will be handled on a fair basis.

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