

Response to Bar Association's submission

Para 6 (a) – (b): s.2AB(8)

- We consider that S.2AB(8) is necessary and in order. We have given full explanation on this position in our letter of 21 November 2000.

Para 6(c) – (d): prescribed test

- There is a need for a prescribed test procedure in order to ensure the integrity of the test procedure and the reliability of the test result. Devising a prescribed genetic test procedure helps to prevent abuses and to avoid disputes. As explained in our letter of 21 November 2000, this will facilitate the verification of the claimed parentage so that applications for a Certificate of Entitlement can be processed expeditiously, which will be in the interest of the applicants. Also, the Director may draw adverse inferences only if it is proper to do so having regard to the reasons for refusal or failure to comply with the prescribed procedure.

Para 6(e): right of appeal

- According to s.2AB(6)(b)(ii) of the Immigration Ordinance, the Director of Immigration is obliged to notify a person whose application has been rejected the reason of his refusal to grant a Certificate of Entitlement and to inform him the right to appeal to the Immigration Tribunal. The Tribunal in considering an appeal may examine all the facts of the case. We note the Bar Association's concern that there are no express legislative provisions that enable the Tribunal to draw adverse inferences from non-compliance with the prescribed genetic test procedure. We are reflecting on this matter and will decide if or how best this concern should be addressed.

Para 6(f): claimants to bear the cost of genetic test

- The Director of Immigration will require a genetic test to be done only if he is not satisfied with a claimed parentage based on available evidence. The Director will make a decision on the application based on available evidence if the applicants refuses to undergo the prescribed test. If the applicant agrees to undergo the test, the Director will make a decision after taking into account the test result and the other available evidence. In this event, the Director will not make a decision to reject the application before the test result is available. The result of the genetic test will serve to supplement available evidence which in itself is insufficient. There will therefore be no question of a “wrong call” being made by the Director.

Nor will there be question of “wrong call” in the case of an applicant who has obtained a result from the prescribed test which is not in his favour, proceeding to appeal to the Tribunal on the basis of the result of a genetic test not conducted in the prescribed manner. In this scenario, it remains the fact that the available evidence, which includes the result of the prescribed genetic test, is insufficient to enable the Director to make a decision in favour of the applicant in the first place, whether or not the appeal is allowed eventually.

Para 6(g): full cost recovery

- We will charge a fee on a full cost recovery basis. The present fee level is arrived at based on an estimated caseload of 3 000 per year. We will regularly review the fee level in the light of the actual caseload. We will ensure that the genetic test is carried out in a cost-effective manner so that the fee is kept at a reasonable level. In any event, fee waiver/reduction will be considered where justified on a case by case basis.

Para 7: implications of Article 24 of the Basic Law

- There is no question that the genetic test procedure will inhibit the

rights of persons to establish their right of abode status. Indeed the prescribed genetic test procedure will facilitate the verification of right of abode status under Article 24(2)(3) of the Basic Law. Without the prescribed genetic test procedure, there will be no guarantee over the integrity of the test procedure and the reliability of the test result. This will give rise to abuses and disputes which will in turn prolong and complicate the process to verify a claimed parentage, hence delaying the exercising of the right of abode.

Security Bureau
November 2000