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13 December 2000

Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

By Fax No.: 2877 8024

(Attn.: Mrs Sharon Tong)

Dear Mrs Tong,

Bills Committee on
Immigration (Amendment) Bill 2000

Thank you for your letter of 29 November 2000.

Our response to the issues listed in the attachment of your letter is enclosed.

I should be grateful if you could pass on our response to Members of the Bills Committee.

Yours sincerely,

(Linda KP So)
for Secretary for Security

Response to item 1 : Immigration Tribunal

Paragraph 7 of Schedule 4 to the Immigration Regulations provides that “The Tribunal may consider any matter which appears to it to be relevant to any ground of appeal permitted by the Ordinance notwithstanding the omission of any reference to such matter in the notice of appeal, and may receive and consider any evidence which appears to it to be relevant to the issues before it notwithstanding that the evidence would not be admissible in a court of law.”

2. The Tribunal may receive and consider the results of genetic test conducted by private laboratories pursuant to the above quoted provision.

Response to part 1 of item 2 : As a matter of technology

In terms of technology it is not necessary for the genetic tests to be conducted by two organizations in two places. The reason for the Government's proposal for the genetic tests to be jointly conducted by the Government Laboratory in Hong Kong and the PSD's Criminal Technology Division in Guangdong is explained in our answer to part 2 of this question.

2. The Government is satisfied that the arrangement being proposed, whereby the genetic tests will be conducted in two places, will not in any way adversely affect the accuracy of the test results. The test results will be as accurate as if the tests are conducted in one place. Furthermore, since the prescribed test procedure is built-in with a monitoring mechanism where there will be separate and independent testing of the two designated laboratories and cross checking of the test results, there is an additional procedural safeguard of reliability and accuracy of the genetic test results.

Response to part 2 of item 2 : As a matter of procedure

The proposed arrangement which provides for the genetic tests to be conducted by two organizations in two places is made as a matter of procedure and on the basis of cooperation between the HKSARG and the Mainland authorities.

2. The rationale behind our proposal is as follows :-

- (a) the issuance of a Certificate of Entitlement (C of E) is a matter solely within the responsibility of the Director of Immigration;
- (b) C of E holders who are Mainland residents need a One-way permit to enter Hong Kong to exercise their right of abode;
- (c) the issuance of a One-way permit is a matter solely within the responsibility of the Mainland authorities;
- (d) the Director of Immigration may, in doubtful cases, require by way of a genetic test proof of parentage in order to issue a C of E to an applicant;
- (e) the Mainland authorities may, in doubtful cases, require by way of a genetic test proof of parentage in order to issue a One-way permit to a Mainland resident;
- (f) the genetic tests mentioned in (d) and (e) above could be conducted separately but this, in our view, is not in the interest of the Mainlander in question. Our view is shared by the

Mainland authorities;

- (g) we have therefore discussed with the Mainland authorities and come up with the proposed procedure.

Response to item 3 : Power and role of Mainland authorities

Section 2AB(6) of the Immigration Ordinance empowers the Director of Immigration to issue a C of E or to refuse an application for a C of E. The Mainland authorities only act as the Director's agent in receiving applications for a C of E from Mainland residents claiming right of abode under BL 24(2)(3). All such applications together with the supporting documents received by the Mainland authorities will then be referred to the Immigration Department for processing. The decision on a C of E application will solely be made by the Director to which the Mainland authorities play no part. The need of the provision in the Bill for a prescribed test is to verify the doubtful claimed parentage for the purpose of considering the application for a C of E by the Director. The Bill bears no relationship with the power of the Mainland authorities, nor is their role as the Director's agent affected.

Response to items 4, 5 and 6 :
Technology and procedure of
the Administration's proposed prescribed genetic test

Technology and procedure

As explained in our letter dated 28 November 2000, our proposed prescribed genetic test that involves collaboration with the Mainland authorities' designated laboratory is technologically viable and sound. In conducting the test, the designated laboratory in the Mainland and the Government Laboratory will adopt the same technology and procedures which meet international accreditation standard.

2. This alignment is safeguarded by the implementation of a comprehensive set of quality assurance measures as outlined in the "codes of practice" attached in our letter of 21 November 2000. These measures include those that will ensure that variants such as changes in the composition of the reaction mixture; temperature changes; variation in time and space, equipment, personnel, etc are minimized and will not affect the outcome of genetic analysis under the prescribed procedure.

3. The effectiveness of such a comprehensive set of quality assurance measures has been well tried out by international proficiency tests on genetic analysis. As a quality control exercise, interested laboratories worldwide including the Government Laboratory regularly participate in such proficiency tests recognized by various accreditation bodies all over the world. These tests are organized on a quarterly basis. A test organizer will each time distribute the same samples to over a hundred participants. The participating laboratories will return their analysis to the organizer who will then compile and publish the results obtained. Despite the many differences of the participants, those who adopt stringent quality assurance measures are always able to arrive at the same results and conclusions.

4. While there may not be precedents where there is a procedure in which the tissue samples of different members of a family are sent to two

laboratories for testing and matching, the results of such international proficiency tests have clearly demonstrated that in terms of technology, as long as good quality assurance measures are in place, the same genetic test results can be achieved. The simulation tests completed by the Government Laboratory and the Mainland authorities have shown that the results obtained by the two sides are fully consistent.

5. With the implementation of the quality assurance measures, our prescribed genetic test will be able to achieve the same level of accuracy as any other genetic tests fully conducted in a single laboratory. At present, genetic science is unable to achieve an accuracy rate of 100%. There is still a margin of error, albeit very small: 1 in every 500 000 cases for a claimed parentage to be wrongly confirmed and less than 1 in every 1 million cases for a true parentage to be wrongly rejected. Our prescribed genetic test is subject to the same margin of error in terms of science. But since the prescribed test procedure is built-in with a monitoring mechanism where there will be independent testing of the two designated laboratories and cross checking of the test result, there is an additional procedural safeguard of reliability and accuracy of the genetic test results.

Accreditation

6. The Government Laboratory is accredited by the ASCLD (American Society of Crime Laboratory Directors) for forensic serology and DNA analysis. Such accreditation status covers the full scope of forensic DNA analysis of which parentage testing is only a part. The allegation made by the Hong Kong DNA Chip Ltd in its letter of 1 December 2000 that ASCLD is not competent for accreditation for parentage testing is totally unfounded. The Criminal Technology Division of the Guangdong Provincial Public Security Department, as explained above, will adopt the same technology and procedure of the Government Laboratory's which meet international accreditation standard.

7. Apart from the ASCLD, reputable accreditation bodies include the American Association of Blood Banks (AABB) and the National Association of Testing Authorities, Australia (NATA). All these bodies have issued specific standards and guidelines concerning DNA analysis as well as genetic tests for parentage determination.

8. The areas international accreditation bodies will look into for accreditation purpose include laboratory personnel, technical capability concerning equipment, materials and facilities, and quality control on documentation, validation, sample handling procedures, analytical procedures, work documentation, interpretation, report writing and review, proficiency testing, audits, safety, etc. To prove a laboratory's ability in these various aspects, compliance with the laid down criteria must be demonstrable. There should also be records of on-going competence.

Security Bureau
December 2000