

For discussion
6 June 2002

LegCo Panel on Security

Judgment of the Court of Final Appeal on the Ng Siu Tung, Sin Hoi Chu and Li Shuk Fan Cases

Introduction

On 24 January 2002, the Administration briefed the LegCo Panel on Security on the Court of Final Appeal (CFA)'s judgment on the *Ng Siu Tung*, *Sin Hoi Chu* and *Li Shuk Fan* cases and related issues. This paper updates Members on the latest developments.

CFA Judgment

2. On 10 January 2002 the CFA handed down its judgment on the *Ng*, *Sin* and *Li* cases involving about 5,000 applicants. The CFA directed the parties to consult together for the purposes of drawing up and submitting to the CFA for approval a draft of formal orders to be made by the CFA for disposing appeals of individual applicants in accordance with the judgment in respect of each of the representative applicants and of each applicant represented by them.

3. As at 28 May 2002, sealed orders have been made by the CFA on the cases of 4,804 applicants. Of these, 150¹ cases were

¹ Of the 150 cases which were allowed by the CFA, 81 fell under the Government's Concession Policy as ruled by the CFA; 66 were recipients of the specified letters issued by the Legal Aid Department or Secretary for Security; and 3 arrived in Hong Kong during "Period 1" and were born after one of his parents had become a Hong Kong permanent resident. For details on the CFA's judgment on these issues, please see paragraph 7 of the paper we prepared for the Panel meeting on 24 January 2002.

allowed, 406² withdrawn and 4,248 dismissed. The parties are processing the remaining 311 cases in compliance with the directions given by the court.

4. Separately, a number of claimants have applied for leave for judicial review. The Court of First Instance has rejected most of the applications and 7,602³ applicants have appealed. As at 28 May 2002 the Court of Appeal has disposed of 4,417 of these appeal cases, of which 4,304 were dismissed or withdrawn, none allowed and 113 awaiting court order.

Removal Action

5. More than 4,700 right of abode (ROA) claimants left voluntarily before expiry of the grace period on or before 31 March 2002. On 1 April the HKSAR Government resumed removal action against those with no right to remain in Hong Kong in accordance with the law. Between 1 April and 28 May 2002, we have repatriated 435 claimants.

6. At present, there are some 4,100 claimants still remaining in Hong Kong. The vast majority (94%) are adults, with the largest number falling in the 31 to 40 age group. Only 6% are children under 18. The Mainland authorities have publicly announced that Mainland dependent children whose parents are both in Hong Kong can normally come and settle in Hong Kong within one year of application. Since the CFA judgment, a total of 372 Mainland children have voluntarily returned to the Mainland to apply to come to Hong Kong through legal channel. For the small number still remaining in Hong Kong, we appeal to their parents to make suitable arrangements for their return to the Mainland and care during the interim period whilst they are waiting for a One-way Permit (OWP). This will be in the best interest of the children concerned. We will continue to liaise with Mainland authorities to

² These 406 withdrawn cases involved applicants who had already been issued with One-way Permits or Hong Kong identity cards during the course of the Ng and Sin litigation.

³ Some applicants are not physically in Hong Kong at present.

make suitable arrangements for the return of those children whose parents cannot arrange for their care in the Mainland.

Exercise of Discretion by the Director of Immigration

7. For individual cases with exceptional humanitarian or compassionate considerations, the Director of Immigration can, pursuant to sections 11, 13 and 19(1) of the Immigration Ordinance, consider exercising his discretionary power to allow a person to stay in Hong Kong. The Director exercises this statutory power reasonably, fairly and in good faith in accordance with established procedures.

8. As exercise of the Director's discretionary power is an exception rather than the norm, the number of such cases should be small. Between 1999 and the end of 2001, the Director has allowed 231 Mainland residents to stay in Hong Kong on compassionate grounds. This year, so far the Director has exercised his discretion in respect of 57 Mainland residents.

One-way Permit and Two-way Permit Schemes

9. Like other Mainland residents, ROA claimants who have lost their cases in court may apply through the OWP and Two-way Permit (TWP) schemes to settle with or visit their family members in Hong Kong. Over the years, the Mainland authorities have introduced a number of improvement measures to facilitate family reunion. Recent initiatives include-

- (a) accepting applications for OWPs from adopted children on the same basis as natural children with effect from 1 October 2001;

- (b) relaxing the age limit of dependent children joining parents in Hong Kong from 14 to below 18 with effect from 1 November 2001; and
- (c) announcing that eligible children under (b) should be able to settle in Hong Kong within one year.

10. On 20 May 2002, the Mainland authorities started issuing multiple exit endorsements under the TWP Scheme to Mainland residents with spouses in Hong Kong. Under this new arrangement, holders of multiple TWPs can stay in Hong Kong as a visitor for up to three months. During this 3-month period, the visitor can make multiple trips between Hong Kong and the Mainland so long as he or she meets normal immigration requirements. This will provide more flexibility to better suit the needs of individual users. We understand that the Mainland authorities will review the new facility after its implementation with a view to extending it to other categories of users. We will continue to liaise with the Mainland authorities on this.

11. The HKSAR Government is aware that under the present OWP scheme, some adult children born to Hong Kong parents in the Mainland are not eligible to apply for settlement in Hong Kong, namely those who were born before either one of their parents had become Hong Kong permanent residents, and whose parents have other children in Hong Kong. Following a meeting on 29 January 2002 with the Immigration Department, the Mainland's Bureau of Exit-Entry Administration of the Public Security Ministry agreed to consider the feasibility of allowing the entry of more adult Mainlanders with a genuine need to come and settle in Hong Kong. In the meantime, we have clearly indicated to the public and ROA claimants that since the OWP scheme is under the purview of the Mainland authorities, the HKSAR Government is not in a position to guarantee that any new arrangement will be put in place. Furthermore, awaiting the outcome of the review would not provide an acceptable justification for those with no right to remain in Hong Kong to not return to the Mainland.

Way Forward

12. The HKSAR Government will handle all ROA cases in accordance with the law and take rational, restrained but firm actions to remove those with no right to stay in batches. We will continue to appeal to remaining ROA claimants to leave voluntarily.

Security Bureau
May 2002