

For discussion
on 1 November 2001

LegCo Panel on Security

Immigration Policy on Adopted Children

Introduction

This paper informs Members of the existing immigration policy on adopted children seeking to enter or remain in Hong Kong, with particular focus on Mainland adopted children which is the subject of a recent ruling by the Court of Final Appeal (CFA).

Background

2. It is estimated that there are some 100 Mainland children in Hong Kong claiming to be adopted children of Hong Kong permanent residents. Many of them are illegal immigrants and overstayers. So far 60 such cases have been screened. When the Tam Nga Yin case was still being considered by the court, these claimed Mainland adopted children were released on recognizance under section 36(1) of the Immigration Ordinance pending removal or consideration of the issue of a removal order.

3. The CFA delivered its judgment on the Tam Nga Yin case on 20 July 2001. It ruled that persons adopted by Hong Kong

permanent residents within Article 24(2)(1) or 24(2)(2) of the Basic Law are not eligible for right of abode under Article 24(2)(3). The Government will deal with all adopted children cases in accordance with the law and the CFA ruling. Our policy on the entry of adopted children from overseas and from the Mainland is set out in the ensuing paragraphs.

Adopted children from Overseas

4. Adopted children of foreign nationality may apply to join their adoptive parents in Hong Kong for residence as dependants under existing immigration policy. Applications for entry of dependants will be favourably considered if :

(a) the sponsor is a bona fide resident who has acquired the right of abode or right to land in Hong Kong, or has been permitted to remain for employment or investment in his/ her own right;

(b) dependent children applying to enter Hong Kong should be aged 20 or below;

(c) the bona fides of the sponsor and the applicant are confirmed;

(d) the relationship between the applicant and the sponsor is satisfactory; and

(e) the sponsor is able to support the dependant's living at a

reasonable standard and provide him/her with suitable accommodation in Hong Kong.

5. The above policy does not apply to dependants who are Mainland residents, former Mainland residents staying in Macau who were not settled there by 14 January 1979 and those from countries which pose security and/or immigration risks.

6. Adopted children who satisfy the criteria stated in paragraph 4 will be favourably considered for the granting of an entry visa or permit to enter Hong Kong as dependants. Successful applicants will be given an initial permission of stay for 1 year, which can be further extended as long as the entry requirements are still being met. Dependants from overseas, including those who are adopted children, may acquire right of abode after having resided in Hong Kong for a continuous period of not less than 7 years and have taken Hong Kong as the place of permanent residence in accordance with paragraph 2(d) of Schedule 1 to the Immigration Ordinance.

Adopted Children from the Mainland

7. Under existing policy and in line with Article 22(4) of the Basic Law, all Mainland residents who wish to enter Hong Kong for settlement have to apply for a One-way Permit (OWP) from the relevant Mainland authorities. Concerns were previously expressed on whether children adopted in the Mainland could apply for a OWP or should they be entitled to a Certificate of Entitlement. The CFA ruled

in July that persons adopted by Hong Kong permanent residents within Article 24(2)(1) or 24(2)(2) of the Basic Law are not eligible for right of abode under Article 24(2)(3). Now that the legal position is clear, the Mainland authorities have confirmed that with effect from 1 October 2001, they will start processing OWP applications of adopted children who wish to come to Hong Kong to join their adoptive parents.

8. Under the OWP scheme, children under the age of 15 may apply to join their parents in Hong Kong. Those aged 18 or above may apply to take care of their parents aged 60 or above who have no other children in Hong Kong. The same criteria are applicable to adopted children. The Mainland authorities will examine the bona fides of the adoption in OWP applications based on the relevant Mainland laws (see [Annex](#)). The Immigration Department will render necessary assistance in verifying the status of the adoptive parents in Hong Kong where necessary.

9. Like other OWP holders, adopted children who are Chinese citizens coming from the Mainland to Hong Kong for settlement will be eligible for right of abode after having resided here for a continuous period of not less than 7 years in accordance with Article 24(2)(2) of the Basic law and paragraph 2(b) of Schedule 1 to the Immigration Ordinance.

Security Bureau

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Adoption in the Mainland

The Adoption Laws of the People's Republic of China 《中華人民共和國收養法》 (the Adoption Laws) were enacted in December 1991 and took effect since April 1992. The Adoption Laws were amended in April 1999. Prior to the enactment of the Adoption Laws, there was no formal legislation in the Mainland governing proper procedures for and recognition of adoption. Adoption was usually carried out in private on the basis of mutual consent between the adopter and the guardians/parents of the adoptee. Some parties involved in the adoption would notarise their cases at a notarised agency (公證處) at the county level. The notarised certificate (事實收養公證) was deemed as proof of the adoption.

2. According to the Adoption Laws, only minors under the age of 14 may normally be adopted. The adopter must be aged 30 or above and is capable of rearing and educating the adoptee. The adoption shall be registered with a home affairs office above the county level (縣級以上人民政府民政部門) in the Mainland. An adoptive relationship is established as at the date of registration. Parties involved in the adoption may also enter into an agreement and notarise the adoption at a notary agency. After establishment of the adoptive relationship, the public security bureau will process the household registration of the adoptee in accordance with the relevant regulations.

3. A foreigner may adopt a child in the Mainland in accordance with Article 21 of the Adoption Laws. Apart from satisfying the requisite criteria under the Mainland Adoption Laws, the adopter has to seek approval from the relevant authorities in accordance with the law in his/her place of domicile. The adopter should conclude a written agreement with the person placing the child for adoption and register the adoption with a home affairs department at the provincial level in the Mainland.