

For information

LegCo Panel on Security Right of Abode

Introduction

This paper sets out the statistics and other information requested by the Security Panel on the subject of Right of Abode (ROA).

Details

Outstanding ROA litigation

2. The Court of Final Appeal (CFA) handed down a judgment on the *Ng Siu Tung* cases, the *Sin Hoi Chu* cases and the single case of *Li Shuk Fan* on 10 January 2002. In that judgment, the CFA directed the parties to consult together for the purposes of drawing up and submitting to the CFA for approval draft formal orders to be made by the CFA for disposing the appeals in respect of each of the representative applicants and of each applicant represented by them in accordance with the judgment.

3. Among the some 5 000 applicants in the *Ng Siu Tung* cases, the cases of the majority applicants have been disposed of in accordance with the CFA judgment. Cases of about 200 applicants with dispute on facts have been remitted to the Court of First Instance (CFI) for determination. The CFI has so far disposed of 20¹ of these cases. Hearing of the remaining cases will resume on 21 December 2004 (for one claimant who has requested an early hearing date) and in March 2005. As at the end of October 2004, sealed orders have been made by the CFA on the cases of 4 897 applicants. Of these, the cases of 196² applicants have been allowed, 415³ withdrawn and 4 286 dismissed.

¹ Two cases were remitted by the CFA to the CFI for further determination.

² Of the 196 applicants, 120 fell under the Government's Concession Policy; 67 applicants were recipients of the specified letters issued by the Legal Aid Department or Secretary for Security; and nine arrived in Hong Kong during "Period 1" and were born after one of their 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 submitted by the Administration for the Panel meeting on 24 January 2002.

³ These withdrawn cases involved 415 applicants who had already been issued with One-way Permits or Hong Kong identity cards.

4. The appeal of the 43 applicants in the *Sin Hoi Chu* cases have all been disposed of - 2⁴ have been allowed, 3 withdrawn and 38 dismissed. Li Shuk Fan's case has been allowed by the CFA.

5. Separately, as at the end of October 2004, about 9 400 ROA claimants had applied for leave to apply for judicial review against the Director of Immigration's decisions to remove them from Hong Kong. Leave applications of the majority of applicants have been refused by the CFI and about 7 612 applicants have subsequently filed appeals to the Court of Appeal. The Court of Appeal has disposed of the appeals of 7 596 applicants, of which 7 594 have been dismissed or withdrawn and 2 allowed. Hearing of 16 appeals has yet to be arranged.

ROA claimants in Hong Kong

6. The HKSAR Government has been taking removal action, since 1 April 2002, against those ROA claimants with no right to remain in Hong Kong in accordance with the law. Up to end-October 2004, we have repatriated over 3 500 ROA claimants. Together with the 4 721 ROA claimants who departed voluntarily within the Grace Period between 11 January and 31 March 2002, a total of more than 8 200 ROA claimants have left Hong Kong. At present, we believe some 480 ROA claimants are still remaining here, including some 280 who have absconded from scheduled removal.

Certificate of Entitlement

7. Persons who claim to have the right of abode in Hong Kong by virtue of Article 24(2)(3) have to apply for a Certificate of Entitlement (CoE). From the introduction of the CoE Scheme in July 1997 up to the end of October 2004, ImmD has approved 161 923 CoEs to persons verified to have the right of abode in Hong Kong, comprising 156 449 Mainland applicants and 5 474 overseas applicants. According to our records, 153 726 CoE holders from the Mainland have come to Hong Kong between July 1997 and October 2004. We do not keep statistics on the number of overseas CoE holders who have come to Hong Kong.

⁴ The two applicants were accepted to benefit from the Government's Concession Policy.

One-way Permit Scheme

8. The One-way Permit (OWP) Scheme is subject to a daily quota of 150 places. Between July 1997 and end-2001, some 250 000 eligible Mainland residents have entered Hong Kong under the Scheme (i.e. a daily average of 153). The total number of OWP entrants in 2002 and 2003 was about 98 700 (i.e. a daily average of 135).

9. As far as adult Mainland children who are not eligible for CoEs are concerned (i.e. adult Mainland residents born before one of their parents acquired the status of Hong Kong permanent resident), they do not enjoy the ROA but may apply to settle in Hong Kong under the OWP Scheme to take care of aged parents in specified circumstances. We have previously suggested to Mainland authorities the possibility of allowing more adult Mainland children with a genuine need to settle in Hong Kong to be eligible to apply under the OWP Scheme. We have, in doing so, made it clear to the public and the ROA claimants that this is a matter for Mainland authorities to consider and decide since the OWP Scheme is under their purview, and stressed that the HKSAR Government was not in a position to guarantee that a new arrangement would eventually be put in place. Mainland authorities have not indicated their support for the suggestion so far.

10. According to information published by Mainland authorities on the OWP Scheme, Mainland spouses residing in Guangdong need to wait for around seven years and those residing outside Guangdong have to wait for about five years before their application for an OWP will be granted. As regards children who are eligible for the CoE, they may obtain an OWP to enter Hong Kong and settle in Hong Kong following the confirmation of such eligibility.

Security Bureau

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