

立法會
Legislative Council

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LC Paper No. CB(2)1849/17-18
(These minutes have been seen
by the Administration)

Subcommittee on Rights of Ethnic Minorities

Minutes of the meeting
held on Monday, 7 May 2018, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex

- Members present** :
- Hon Paul TSE Wai-chun, JP (Chairman)
 - Hon Alice MAK Mei-kuen, BBS, JP (Deputy Chairman)
 - Hon Claudia MO
 - Hon LEUNG Che-cheung, SBS, MH, JP
 - Hon KWOK Wai-keung, JP
 - Hon Dennis KWOK Wing-hang
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Dr Hon Helena WONG Pik-wan
 - Hon IP Kin-yuen
 - Hon POON Siu-ping, BBS, MH
 - Dr Hon CHIANG Lai-wan, JP
 - Hon Andrew WAN Siu-kin
 - Dr Hon Junius HO Kwan-yiu, JP
 - Hon Holden CHOW Ho-ding
 - Hon SHIU Ka-chun
 - Hon Vincent CHENG Wing-shun, MH
- Members absent** :
- Hon Abraham SHEK Lai-him, GBS, JP
 - Hon CHU Hoi-dick
- Public Officers attending** :
- Miss Winnie CHUI Hiu-lo
Principal Assistant Secretary (Security) C
Security Bureau

 - Mr AU Ka-wang
Assistant Director (Personal Documentation)
Immigration Department

Attendance by invitation : Mr WHY

PathFinders Limited

Ms Bi Bi SADIA
Case Manager

Mr Abdull Ghafar KHAN

Kwai Chung Ethnic Minorities Concern Group

Mr Minhas RASHAD

New People's Party

Miss Sammi FU

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (2) 3

Staff in attendance : Miss Cindy HO
Senior Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

Action

I. Difficulties encountered by ethnic minorities in applying for the Hong Kong Special Administrative Region Passport
[LC Paper Nos. CB(2)1306/17-18(01) and (02)]

The Subcommittee deliberated (index of proceedings attached at **Annex**).

2. At the invitation of the Chairman, Principal Assistant Secretary (Security) C took members through the Administration's paper [LC Paper No. CB(2)1306/17-18(01)].

(At 4:37 pm, the Chairman ordered that the meeting be suspended for five minutes. The meeting resumed at 4:42 pm.)

3. The Subcommittee received views from five deputations/individuals attending the meeting. The Subcommittee noted the following major views expressed by the deputations/individuals:

- (a) many ethnic minority ("EM") residents including those who were born and raised in Hong Kong had met great difficulties in acquiring Chinese nationality through naturalization and in applying for Hong Kong Special Administrative Region ("HKSAR") passport;
- (b) the failure for EM residents to obtain the HKSAR passport had shattered their sense of identity. They were denied the protection enjoyed by HKSAR passport holders when travelling abroad. They considered the arrangement unfair and discriminatory and impacted on their study and employment opportunities;
- (c) the Immigration Department ("ImmD") rejected applications for naturalization as Chinese nationals by non-ethnic Chinese residents in Hong Kong without giving any explanation, and some deputations believed that ethnicity and their precarious financial situation could be the main reasons of refusal;
- (d) some frontline officers tended to dissuade EM applicants from submitting applications, suggesting that their chances were poor and some applicants might give up in view of the high application fee (i.e. the application fee was \$3,460 and an applicant was required to pay an initial fee of \$1,730 at the time of application which was non-refundable);
- (e) ImmD should provide clearer and detailed guidelines on vetting and approving applications for naturalization as Chinese nationals to ensure that applicants of different ethnicities were treated fairly;
- (f) the waiting time for processing naturalization applications was unduly long and the timeframe was not known to the applicants; and
- (g) the application forms related to naturalization were not legible and were not uploaded on the ImmD's website.

4. The Administration made the following initial response:

- (a) in submitting applications, applicants must provide information/documents to prove that they had satisfied all the

conditions for the issuance of HKSAR passport as stated in paragraph 2 of the Administration's paper;

- (b) in response to deputations' question on whether a person whose ethnicity was not Chinese could apply for Chinese nationality, the Administration advised that pursuant to Article 7 of the Nationality Law of the People's Republic of China ("CNL"), foreign nationals or stateless persons who were willing to abide by China's Constitution and laws and who met one of the following conditions might be naturalized upon approval of their applications:
 - (i) they were near relatives of Chinese nationals;
 - (ii) they had settled in China; or
 - (iii) they had other legitimate reasons.
- (c) in processing an application for naturalization as a Chinese national, ImmD would not only consider whether the applicant met the relevant requirements stipulated in CNL, but also consider each application on its own merits. ImmD would, in general, consider the 10 factors set out in (a) to (j) of paragraph 10 of the Administration's paper. The nationality of the applicant and whether he/she had Chinese bloodline were not a factor for consideration;
- (d) ImmD had a performance pledge regarding applications for naturalization as a Chinese national (i.e. 80% of the applications would be finalized within three months upon receipt of all necessary documents). On average, the performance pledge was fulfilled for 91.27% of the applications for naturalization as a Chinese national in the past three years;
- (e) as stated in section 5(1)(a) of the Chinese Nationality (Miscellaneous Provisions) Ordinance (Cap. 540), where in connection with any nationality application any discretion may be exercised under or pursuant to any of the provisions of the CNL, as implemented in HKSAR in accordance with the Explanations¹, the discretion shall be exercised without regard to the race, colour or religion of any person who might be affected by its exercise. This provision applied to the naturalization applications handled by ImmD, including those from stateless persons, non-ethnic Chinese

¹ The Explanations were made at the 19th Session of the Standing Committee of the 8th National People's Congress on 15 May 1996.

children being legally adopted by Hong Kong ethnic Chinese couples, and non-ethnic Chinese residents; and

- (f) as regards refusal reasons, section 5(1)(b) of the Chinese Nationality (Miscellaneous Provisions) Ordinance (Cap. 540) stipulated that "any decision to approve or refuse the nationality application in the exercise of the discretion shall not be subject to appeal to, or review in, any court, and there shall be no need to assign any reason for the decision". Nevertheless, upon processing of the application, ImmD would contact the applicant for provision of supplementary information, which might shed light on the issues of concern.

Follow-up actions required of the Administration

Admin 5. The Administration was requested to:

- (a) provide statistics on the original nationality of non-ethnic Chinese applicants for naturalization (other than South Asians) from different countries including United Kingdom, European countries, Canada, and United States of America;
- (b) provide statistics on refusal reasons and written response to address members' concerns on (a) how assessment on individual applications would be made having regard to the 10 factors set out by ImmD and (b) areas for improvement to enhance transparency of the vetting and approving mechanism in the absence of an appeal mechanism; and
- (c) review the 10 factors in the light of operational experience, as well as the legal basis for applying the 10 factors which were not stipulated in CNL.

II. Any other business

[LC Paper Nos. CB(2)1131/17-18(01) and CB(2)1329/17-18(01)]

6. Referring to Hon Claudia MO's letter and the Administration's reply letter [LC Paper Nos. CB(2)1131/17-18(01) and CB(2)1329/17-18(01)], the Chairman proposed and members agreed to discuss "The work of the Ethnic Minorities Steering Committee and support measures for ethnic minorities" at the meeting in July 2018.

7. Members agreed to discuss "Issues relating to ethnic minority women (including poverty and employment assistance)" at the next meeting on 5 June 2018 at 4:30 pm with deputations and the Administration.

8. There being no other business, the meeting ended at 6:35 pm.

Council Business Division 2
Legislative Council Secretariat
17 July 2018

**Proceedings of the meeting of the
Subcommittee on Rights of Ethnic Minorities
on Monday, 7 May 2018, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s) / Discussion	Action required
<i>Agenda item I - Difficulties encountered by ethnic minorities in applying for the Hong Kong Special Administrative Region Passport</i>			
000503 - 001044	Chairman Administration	Opening remarks Briefing by the Administration [LC Paper No. CB(2)1306/17-18(01)]	
001045 - 001632		<i>Suspension of meeting</i>	
001633 - 001737	Chairman	Opening remarks	
001738 - 002248	Mr WHY	Presentation of views	
002249 - 002559	PathFinders Limited	Presentation of views [LC Paper No. CB(2)1352/17-18(01)]	
002600 - 003244	Mr Abdull Ghafar KHAN	Presentation of views [LC Paper No. CB(2)1309/17-18(01)]	
003245 - 003902	Kwai Chung Ethnic Minorities Concern Group	Presentation of views	
003903 - 004124	New People's Party	Presentation of views	
004125 - 005635	Chairman Administration	The Administration's initial response to the views and concerns expressed by the deputations/individuals.	
005636 - 010641	Chairman Mr POON Siu-ping Administration	Mr POON Siu-ping sought information on the following issues: (a) of the total of 7 789 applications for naturalization as Chinese nationals received in the past five years where only 5 966 were approved, the reasons for rejecting 1 820-odd applications by the Immigration Department ("ImmD") and a breakdown by reasons; (b) (i) how many applicants had lodged an appeal to the Hong Kong Special Administrative Region ("HKSAR") Passports Appeal Board; and (ii) the final outcome of the relevant cases.	

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		<p>The Administration advised that:</p> <p>(a) each application for naturalization as a Chinese national would be handled on its individual merits. The ImmD would take into account the 10 factors outlined in paragraph 10 of the Administration's paper ("the 10 factors") before making a decision. ImmD did not maintain statistics on refusal reasons as relevant decisions were made on a combination of factors, not just one single factor. The number of applications approved in 2017 as shown in paragraph 13 of the Administration's paper did not include applicants who had not yet relinquished their own nationality. Besides, under the Chinese Nationality (Miscellaneous Provisions) Ordinance (Cap. 540), decisions of the Director of Immigration ("Director") on naturalization applications could not be subject to appeals, and there was no need to assign any reason for the decisions. Applicants who were not satisfied with the outcome of an application might request ImmD in writing for reconsideration by officers of higher ranks; and</p> <p>(b) between 2013 and 2017, ImmD had received 26 cases for reconsideration, eight of which had been approved after reconsideration whereas ImmD's decision remained unchanged for the remaining 18 cases. An applicant might seek reconsideration of his/her application if there was a change in his/her circumstances (such as changes in financial situation or marital status). As decisions of the Director regarding naturalization applications were neither subject to appeals to the court nor a petition mechanism, there was no such cases. Regarding relevant appeals to the HKSAR Passports Appeal Board, currently there were seven appeal cases related to HKSAR passport applications.</p> <p>Referring to the 10 factors in paragraph 10 of the Administration's paper, Mr POON enquired whether an applicant had to meet some or all of the factors before he/she could get approval. The Administration explained that an applicant did not have to meet all the 10 factors and there was also no specific requirement that a certain factor(s) had to be met. Each application for naturalization as a Chinese national would be handled on its individual merits. The objective of setting out the 10 factors was to facilitate assessment on whether or not the conditions stipulated under the Nationality Law of the People's Republic of China ("CNL") were met.</p>	

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010642 - 012207	Chairman Mr Dennis KWOK Administration Dr CHIANG Lai-wan Mr Abdull Ghafar KHAN Kwai Chung Ethnic Minorities Concern Group	<p>Mr Dennis KWOK expressed concern that the figure of rejected applications did not include those withdrawn by applicants on the advice of ImmD frontline officers right at the ImmD counters.</p> <p>Dr CHIANG Lai-wan was concerned that some ethnic minority ("EM") people who were born in Hong Kong (with the right of abode in HKSAR) but did not have any passports or only had British National (Overseas) ("BNO") passports. She requested the Administration to provide figures in this regard. She stressed that for EM people who might not be able to obtain passports from their ancestral home country, they should not be left to become stateless as these people were born in Hong Kong. The Administration advised that it did not have figures on Hong Kong permanent residents who were holders of BNO passport or passports issued by other countries.</p> <p>In response to Dr CHIANG's enquiry, a deputation said that he nearly became a stateless person, because at one time neither the Pakistani embassy nor Indian embassy was willing to issue a passport to him, and he was also unable to obtain HKSAR passport. The deputation said that there were EM students who were denied the opportunities to study abroad because they were unable to obtain either a HKSAR passport or passport of their ancestral home country.</p>	
012208 - 012537	Chairman Mr Vincent CHENG Administration Mr Abdull Ghafar KHAN	<p>Mr Vincent CHENG expressed the following views:</p> <p>(a) how the Administration conducted assessments in handling applications for naturalization as Chinese nationals, which included, inter alia, "whether the applicant has sufficient knowledge of the Chinese language"; and</p> <p>(b) if an applicant was not able to become a Chinese national after he/she had given up their own nationality, whether he/she would become stateless.</p> <p>The Administration responded that:</p> <p>(a) in assessing the applicant's knowledge of the Chinese language, ImmD would invite applicant for an interview and would in general consider whether the applicant was capable of communicating with others in Chinese in daily life; and</p> <p>(b) ImmD would first vet the application and if the case was reasonably strong, approval-in-principle would be granted and a letter would be issued to the applicant which the</p>	

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		<p>applicant could bring along to the relevant embassy to give up his/her own nationality. The applicant must provide evidence that he/she had renounced his/her existing nationality. Upon submission of the required evidence, ImmD would issue a Certificate of Naturalization and with this certificate, the holder could then use it to apply for HKSAR passport.</p> <p>Mr CHENG further enquired how many applicants were rejected because of lack of Chinese language proficiency. The Administration reiterated that it did not maintain statistics on refusal reasons.</p>	
012538 - 013158	Chairman Mr Andrew WAN Administration	<p>Mr Andrew WAN stressed that the process and criteria for vetting and approving such applications lacked transparency. He pointed out that many EM residents had been residing in Hong Kong for a long time but their applications for naturalization as Chinese nationals had been refused. The Chairman enquired whether ethnicity and financial situation of the applicants were the predominant considerations.</p> <p>The Administration advised that ImmD adopted the same principle in processing all HKSAR passport applications without regard to the race of the applicant. From the establishment of HKSAR (i.e. July 1997) to December 2017, the most common original nationalities of applicants in respect of naturalization applications were: Pakistani, Indonesian, Indian, Vietnamese and Filipino, and their success rates ranged from over 70% to over 90%. As regards assessment of the financial situation of an applicant, the objective was to ensure that the applicant had a reasonable income to support himself/herself and his/her family.</p>	
013159 - 015047	Chairman Ms Claudia MO Dr Fernando CHEUNG Administration	<p>Dr Fernando CHEUNG requested the Administration to provide statistics on original nationality of applicants from different countries including the United Kingdom, European countries, Canada, and United States of America. Ms MO considered it unreasonable to impose an income criteria when handling applications from EM people who were born in Hong Kong as they should be allowed to acquire citizenship by birth. The Administration was requested to explain why Pakistani had a relatively low success rate in terms of their naturalization applications.</p> <p>The Administration explained that the concepts of nationality and right of abode were different, and there was established mechanism to deal with issues relating to acquiring citizenship by birth or naturalization. The Administration responded that in 2017, the top five original nationalities of applicants whose naturalization applications were approved</p>	

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		<p>with the following success rates: Indian (67.2%), Pakistani (78.9%), Indonesia (over 90%), Filipino (over 80%) and Vietnamese (over 80%). The Administration agreed to collate statistics on other original nationalities of applicants for naturalization applications. The Administration took note of members' views on the need to enhance transparency of the mechanism and would seek to improve in this regard.</p> <p>Dr CHEUNG considered that having a passport was only a basic human right, hence the above success rates were not high. He queried why the refusal reasons were not recorded even though the Director was not obliged to give such reasons to the applicants under the law. He also queried the legal basis for putting in place the 10 factors which were not stipulated in CNL. As assessment on the basis of these factors might involve subjective judgment, he enquired how assessments on individual applications would be made having regard to the 10 factors, for example, what amounted to "reasonable income", "good character and sound mind", "sufficient knowledge of the Chinese language" etc.</p> <p>The Administration explained that all the information supplied by an applicant would be considered, and the Administration would try to sort out the refusal reasons to address members' concerns. The Administration advised that the 10 factors were set out to help applicants understand whether they would be eligible to apply for naturalization under CNL, and the objective was to gain a better understanding on whether the applicants could integrate into Hong Kong, whether Hong Kong was their habitual residence, whether they could support themselves in Hong Kong. On the other hand, good characters included whether applicants had any criminal conviction record. There was no hard and fast rule with regard to the level of income.</p> <p>The Chairman pointed out that pursuant to Article 7 of CNL, an applicant would only have to meet one of the stipulated conditions, including those who "have settled in China", in order to get naturalized, and there was no mention of the 10 factors in CNL or whether any of these factors were given heavier weight. He asked whether the mechanism would be reviewed, and there were any applications for judicial review against the Director's decision. The Administration said that no judicial review had been lodged to the court.</p> <p>The Administration explained that as stated in section 5(1)(a) of the Chinese Nationality (Miscellaneous Provisions) Ordinance (Cap. 540), where in connection with any nationality application any discretion might be exercised under or pursuant to any of the provisions of CNL, as</p>	<p>Admin (paragraph 5 of minutes)</p> <p>Admin (paragraph 5 of minutes)</p>

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		<p>implemented in HKSAR in accordance with the Explanations¹, the discretion shall be exercised without regard to the race, colour, or religion of any person who might be affected by its exercise. Moreover, section 5(1)(b) of Cap. 540 stipulated that "any decision to approve or refuse the nationality application in the exercise of the discretion shall not be subject to appeal to, or review in, any court, and there shall be no need to assign any reason for the decision." Section 6(b) of Cap. 540 also stipulated that the Director "may by regulation make such provisions as the Director may consider requisite or expedient for the better carrying out of any of the provisions of the Nationality Law, as implemented in the Hong Kong Special Administrative Region". The Administration added that the 10 factors currently taken into account by ImmD were similar to what were implemented by overseas immigration authorities.</p> <p>Dr CHEUNG remarked that as it appeared, the Director would have absolute authority in deciding applications for naturalization on the one hand, and there was no appeal mechanism on the other. He urged that transparency should be enhanced to help the public understand the relative importance and how each of the 10 factors was considered in the assessment process.</p>	<p>Admin (paragraph 5 of minutes)</p>
015048 - 020036	<p>Mr SHIU Ka-chun Administration Chairman Ms Claudia MO</p>	<p>Mr SHIU Ka-chun said that he also came across a case where a university professor had been working in Hong Kong since 1990s but was still not able to be naturalized as a Chinese national after many years. He stressed the importance of enhancing public understanding of the 10 factors, adding that the failure for EM residents to obtain HKSAR passport had caused them great anxiety. The Chairman suggested that consideration be given to reviewing the 10 factors in the light of operational experience.</p> <p>The Administration clarified that ImmD upon receiving applications would remind applicants not to give up their original nationality and this was also a practice adopted by immigration authorities overseas in order to avoid the persons to become stateless. ImmD would enhance communication with the applicants (e.g. any additional information required to be supplied by the applicants) to avoid misunderstanding.</p>	

¹ The Explanations were made at the 19th Session of the Standing Committee of the 8th National People's Congress on 15 May 1996.

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020037 - 020817	Dr Fernando CHEUNG PathFinders Limited Chairman Administration Mr Abdull Ghafar KHAN	<p>Dr Fernando CHEUNG enquired about the number of ImmD officers responsible for vetting applications for naturalization, as he was concerned that individual officers might consider applications differently and there was also a lack of transparency in the process.</p> <p>Dr CHEUNG remarked that the policy was discriminatory in the way that different treatments were given to different people. He urged the Administration to at least let the applicants know why their applications were rejected having regard to the 10 factors.</p> <p><i>(extension of meeting)</i></p> <p>The Chairman concluded that while the refusal reasons were not required to be given under the law, a more transparent approach to help applicants understand why their applications were rejected would ease their worries and concerns. The Administration agreed to give thought to members' views and would seek to improve on enhancing transparency. The Chairman also reiterated his concern on the legal basis for applying the 10 factors which were not stipulated in CNL. The Administration agreed to provide a written response on the issues raised at the meeting.</p>	<p>Admin (paragraph 5 of minutes)</p> <p>Admin (paragraph 5 of minutes)</p>
<i>Agenda item II - Any other business</i>			
020818 - 020900	Chairman	<p>Closing remarks</p> <p>Date of next meeting and discussion items</p>	