

Letterhead of DEPARTMENT OF JUSTICE Civil Division

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17 June 1999

Mr Jimmy Ma
Legal Adviser to Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear

**Special Meeting of House Committee
held on 19 May 1999**

Thank you for your letter dated 20 May 1999, I regret the delay in replying.

As you will appreciate, if the Standing Committee of the National People's Congress interprets any part of the Basic Law in response to the request from the Chief Executive, the effect of such an interpretation will depend upon its terms. I am not therefore in a position to give a definitive reply in anticipation of an interpretation being given and my reply may require modification in the light of an interpretation.

Subject to that reservation, my answers to the specific questions are as follows: -

- (a) The two groups of cases arose and were treated in rather different ways. The applicants in the first cases (Ng Ka Ling and others) were agreed as test cases by the Director of Immigration and the solicitors for the applicants on the directions of the court. The test cases were intended to be representative of the very much greater number of cases from which they were selected, but which the Director of Immigration agreed raised similar legal

issues. The details of the persons concerned were covered by contemporaneous correspondence.

The second group of cases arose rather differently with 81 persons joining together as applicants (Chan Kam Nga and others). The sole issue for determination in Chan Kam Nga's case was the "at time of birth" point and insofar as there were other issues that Chan Kam Ng and others had in common with Ng Ka Ling, it was agreed that a decision on those issues in the latter case would apply equally to Chan Kam Nga and others. So that, for example, the CFA's decision in respect of the retrospectivity of the No. 3 Ordinance, so far as it is relevant to individual applicants, applies to the applicants in both cases.

- (b) In order for a person to be covered by the "test cases" they would have to show that the Director of Immigration had agreed to such treatment at the time.
- (c) Clearly that would not include persons who were only identified after the CFA judgments.
- (d) As I explain above, I cannot tell at present what effect an interpretation by the Standing Committee of the National People's Congress would have on persons who might otherwise be affected by the CFA judgments.

Yours sincerely,

(Ian Wingfield)
Law Officer (Civil Law)

c.c. Mr R Allcock, DLO/SJO

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