

**Paper for Meeting of Subcommittee
on Resolution under Immigration Ordinance
on 3 July 1999**

This paper explains each provision of the draft Resolution with particular attention to the issues raised by the Legislative Council Legal Services Division.

Amendment

“(a) in paragraph 1(2), by repealing sub-subparagraphs (a) and (b) and substituting -

*‘(a) of a parent and child, between a person and a child born to such person
in or out of wedlock;’”.*

Commentary

2. The proposed amendment reflects the CFA’s decision on the status of children born out of wedlock and provides that children born out of wedlock may derive their right of abode from their father as well as their mother.

3. Paragraph 1(2)(c) has been left intact although the Court of First Instance has found that it contravenes Article 24 of the Basic Law. That decision will be appealed so it would be premature to repeal paragraph 1(2)(c).

Amendment

“(b) by repealing paragraph 2(a) and substituting -

‘(a) A Chinese citizen born in Hong Kong -

(i) before 1 July 1987; or

(ii) on or after 1 July 1987 if his father or

mother was settled or had the right of abode in Hong Kong at the time of his birth or at any later time.’”

Commentary

5. It is necessary to consider not only whether a person qualifies for right of abode under paragraph 2(a) but also the time at which he acquires that status.

6. Before 1 July 1987, the term “right of abode” was not included in the Immigration Ordinance, so the parent of a person born in Hong Kong before 1 July 1987 could not before that date satisfy the right of abode condition. This is the case under existing paragraph 2(a) even for a parent born in Hong Kong or had completed seven years continuous ordinary residence.

7. This situation can be illustrated by the example below:

Mr A was born in Hong Kong or ordinarily resident in Hong Kong for a continuous period of 7 years or more in his childhood. He left Hong Kong for the Mainland in 1939 and ceased to be ordinarily resident. His wife Mrs A visited Hong Kong in 1948 and gave birth to a son (Mr B), who returned shortly after birth with Mrs A to the Mainland.

Mr B was born in Hong Kong at a time when neither Mr A nor Mrs A was settled in Hong Kong. Mr B had the right to land by virtue of his birth in Hong Kong under the then Hong Kong Law. He acquired right of abode on 1 July 1987 when the term was introduced in the Immigration Ordinance, although he was residing in the Mainland at that time.

In 1970, Mr B married a Mainland resident, who in 1972 gave birth to a child (Mr C) in the Mainland. Under paragraph 2(c), Mr C could acquire the right of abode by

descent only if at the time of C's birth Mr B satisfied the condition under the current paragraph 2(a). However, as Mr B could not have the right of abode and was not settled at the time of Mr C's birth in the Mainland, we need to amend paragraph 2(a) as presently proposed so that Mr B could acquire the right of abode to pass it on to Mr C.

Amendment

“(c) by repealing paragraph 2(c) and substituting -

‘(c) A person of Chinese nationality born outside Hong Kong of a parent who, at the time of the birth of that person, was a Chinese citizen falling within category (a) or (b).’”

Commentary

7. As has been demonstrated above a person born before 1 July 1987 may satisfy the conditions for right of abode before that date without being “settled” in Hong Kong. An alternative condition of “was settled” could therefore exclude some persons born outside Hong Kong before 1 July 1987 who if they were born after that date would satisfy the condition of having a parent with right of abode at the date of their birth. It would not therefore be appropriate to use that formula in paragraph 2(c).

8. The absence of the “was settled” element in new paragraph 2(a)(i) again reflects the introduction of the concept of “right of abode” from 1 July 1987. Persons born in Hong Kong before that date acquired right of abode on that date by virtue of their previous status under the Hong Kong (British Nationality) Order 1986.

Department of Justice

2 July 1999