

立法會
Legislative Council

LC Paper No. CB(2) 1137/99-00
(These minutes have been seen by
the Administration)

Ref : CB2/SS/2/99

**Subcommittee on
Immigration (Amendment) Regulation 1999**

**Minutes of meeting
held on Tuesday, 14 December 1999 at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Ronald ARCULLI, JP (Acting Chairman)
Hon David CHU Yu-lin
Hon Cyd HO Sau-lan
Hon James TO Kun-sun

Members absent : Hon Margaret NG (Chairman)
Dr Hon LUI Ming-wah, JP
Hon Gary CHENG Kai-nam, JP
Hon Emily LAU Wai-hing, JP

Public Officers attending : Mr K S SO
Principal Assistant Secretary for Security

Mr Henry SIU Chung-kit
Assistant Director of Immigration

Mr Allen LAI Kai-pang
Government Counsel

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mr Raymond LAM
Senior Assistant Secretary (2)5

Action

As the Chairman was out of town, Mr Ronald ARCULLI was elected as Acting Chairman of the meeting.

I. Meeting with the Administration

(LC Paper Nos. CB(2) 575/99-00 (01) and CB(2)628/99-00 (01))

2. At the invitation of the Acting Chairman, Principal Assistant Secretary for Security (PAS(S)) presented the Administration's paper on issues raised by members at the last meeting on 9 December 1999.

3. As regards the latest version of paragraph 14(1) of Schedule 4 proposed by the Administration, Mr James TO said that it might sometimes be unclear as to whether a particular case should be dealt with under paragraph 14(1)(a) or 14(1)(b). If a relative of an applicant informed the Immigration Tribunal (the Tribunal) that the applicant could not appear at the hearing but would arrive in Hong Kong soon by illegal means, it might be difficult for the Tribunal to decide whether to adjourn the hearing or proceed with the hearing in the absence of the appellant. The Acting Chairman said that under the last part of paragraph 14(1), the Tribunal would have to see if it would be proper in all the circumstances to proceed in the absence of the appellant. He added that if an appellant replied that he might attend a hearing but subsequently failed to appear at the hearing, the Tribunal would usually adjourn the hearing and make such inquiry as was practicable as to whether the appellant would or would not appear.

Action

4. Referring to the revised version of paragraph 14(1) as proposed in the Administration's paper, the Acting Chairman suggested that the phrase "after it has made all due enquiry as is practicable" in paragraph 14(1)(b) be deleted and the phrase "having made due inquiry as is practicable, the Tribunal is satisfied" be added before the word "that" in the last sentence of paragraph 14(1). Mr James TO said that with the addition of the proposed phrase in the last part of paragraph 14(1), the court might interpret that a new and more stringent requirement was imposed by the Amendment Regulation. The Acting Chairman explained that the proposed phrase was drafted after having regard to Assistant Legal Adviser 1's paper for the meeting (LC Paper No. CB(2)628/99-00(01), which quoted the remarks of the Chief Justice in the case of LAU Kong-yung v The Director of Immigration that "An illegal immigrant, whether he entered illegally or has contravened a condition of stay, does not have, as a general rule, a right to a hearing, conducted fairly and in accordance with the rules of natural justice, before a removal order is made against him. A person claiming to be a permanent resident by descent who has landed unlawfully or is contravening or has contravened a condition of stay is in a similar position in this regard.". In the event that the Tribunal turned down the Immigration Department's request for adjourning a hearing, the applicant would be able to apply for a judicial review on the Tribunal's decision. Members agreed to the revised version of paragraph 14(1) as proposed by the Administration and amended by the Acting Chairman.

Notice of hearing date

5. Members noted that the Administration would amend proposed paragraph 11 of Schedule 4 to the effect that the Tribunal would give a written notice to the parties concerned in every case stating the time and date of the hearing.

II. Way forward

6. The Acting Chairman concluded that subject to the amendments to be made by the Administration to Regulation 9A(2) and 9B(2), as well as paragraphs 1, 11 and 14(1) of Schedule 4, the Subcommittee supported the Amendment Regulation. A report would be made to the House Committee at its meeting on 17 December 1999. Members noted that the deadline for giving notice of amendments to the Amendment Regulation was 24 December 1999.

7. There being no other business, the meeting ended at 9:25 am.

Legislative Council Secretariat

15 February 2000