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13 November 1999

BY FAX

Fax No. : 2868 1552
Total no. of page(s) : 2

(Attn. : Mr. K S So
Principal Assistant Secretary)

Dear Mr. So,

Immigration (Amendment) Regulation 1999 (L.N. 273 of 1999)

I refer to the Immigration (Amendment) Regulation 1999 published in the Gazette on 12 November 1999 as L.N. 273 of 1999. I shall be grateful if you would clarify the following :

1. The Immigration (Amendment) (No. 3) Ordinance 1997 (124 of 1997) is deemed to have come into operation on 1 July 1997. Section 2AD(4) of the Ordinance provides that the Tribunal may accept an appeal not lodged within the time limit prescribed in section 2AD(1) or (2). Would the Administration confirm that it has no objection to an appeal so lodged against decisions of the Director made since 1 July 1997?

2. The proposed regulation 9B(2) is drafted along the same lines as regulation 9A(2). However, no distinction as to the nature of appeals to the Tribunal has been made in either subsection. If read out of context, both Schedules 3 and 4 would have effect for the purpose of regulating an appeal to the Tribunal. Would the Administration consider whether drafting could be improved to avoid that confusion?

3. "Appellant" is defined in paragraph 1 of the proposed Schedule 4 to include a person ("representative") who has made an application on behalf of another person ("applicant") under section 2AB(2)(b) or 2AC(2)(b) of the Immigration Ordinance unless the context otherwise requires. Please clarify :

- (a) the purpose of paragraph 14(1)(a) when section 2AD(3) of the Immigration Ordinance prohibits the appeal to be lodged at any time at which the applicant is in Hong Kong;

- (b) whether the term "appellant" in paragraph 14(1)(b) and (c) refers to the representative and excludes the applicant whereas the term in paragraph 14(1)(a) means the reverse;
- (c) whether confusion would arise in construing paragraph 14 since the term "appellant" refers to different persons in each sub-subparagraph;
- (d) on the basis that paragraph 14(1)(a), (b) and (c) are to be construed disjunctively by reason of the conjunction "or", whether every appeal would be heard in the absence of the "appellant" by virtue of paragraph 14(1)(a);
- (e) if the answer to (d) is affirmative, under what circumstances would the provisions in paragraphs 10 and 11 apply;
- (f) the reason for adopting the definition of "appellant" and whether drafting could be improved to distinguish the representative from the applicant in certain contexts.

4. Paragraph 8 of the proposed Schedule 4 provides that the Director shall be the respondent to the appeal. "Director" is defined in the Ordinance to mean the Director of Immigration, the Deputy Director of Immigration, any assistant director of immigration and any member of the Immigration Service of the rank of senior principal immigration officer. Is it the policy intent for this definition to apply, especially when representation by an immigration officer has been provided for? For your reference, Schedule 3 appoints the Director of Immigration as the respondent to an appeal against a removal order.

Your reply before 17 November 1999 would facilitate my reporting on the Amendment Regulation to the House Committee on 19 November 1999.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser