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Clerks to Security Panel
LegCo Secretariat
3/F., Citibank Tower
3 Garden Road
Hong Kong
(Attn: Mr. Raymond Lam)

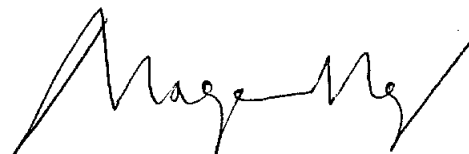
Dear Mr. Lam,

Immigration policy for non-Chinese nationals

The news reports in the South China Morning Post dated 4, 6 and 10 August (enclosed) revealed that a new procedure has been adopted by the Immigration Department regarding claims for Hong Kong permanent resident status by non-Chinese nationals. Such new procedure comes together with a new, more restrictive policy on dependants of professionals entering Hong Kong to work give people the impression that the Administration is tightening its immigration rules to non-Chinese nationals. As this has aroused great public concern and I suggest that the Security Panel discusses the matter as soon as possible in the new LegCo session. I should be most grateful if you would and raise the matter with the chairman of the Panel.

With regards,

Yours sincerely,



Margaret Ng

headline

Expats face new rules on residency

Cliff Buddle Expatriates applying to become permanent residents are facing new, stricter procedures that require them to show they have taken concrete steps to adopt Hong Kong, and nowhere else, as their home.

Applicants are now required to sign a declaration stating that the special administrative region is their only place of permanent residence.

Many are being asked to provide evidence to support this, including proof of ownership of property in Hong Kong, an intention to establish their family here, and even their career plans.

The changes have led to concern in the expatriate community that the new approach will make becoming a permanent resident more difficult, especially for those who travel back to their countries of origin frequently or own second homes abroad.

But Assistant Director of Immigration Tsoi Hon-kuen sought to ease fears, saying a reasonable approach would be adopted and that people should not worry simply because they owned property outside Hong Kong.

He said that the new arrangements were required as a result of a Court of Final Appeal ruling in February.

We had to do something to ensure our procedures were legal, so we are asking for a little bit more information. There has not been a policy change, it is a change in the law. We have to comply with the judgment, Mr Tsoi said.

Ironically, the top court's judgment went against the government, removing the unconstitutional requirement that only those whose conditions of stay in Hong Kong have been lifted by the Director of Immigration can apply for permanent residency.

But it also stated that applicants must show that they have taken action to make Hong Kong alone their place of permanent residence.

Mark Daly, a solicitor involved in bringing the case, said the changes suggested the government was trying to get around the judgment, which had been intended to make the application process simpler and to remove discretionary hurdles to securing the right of abode.

By looking at items such as career plans and intentions, it appears the government is trying to carve out another unnecessary sphere of discretion, he said.

Mr Daly said the Immigration Department had laid itself open to the allegation that it was a sore loser which did not really want to follow the judgment.

This risks their being open to future challenges if anyone is refused on such grounds, he added.

The department's new approach was put in place in mid-June, and since then 2,700 of 5,000 outstanding applications have been processed.

One of the requirements now being made of some applicants is that they provide the government with their career plans and intentions concerning their future place of residence.

Mr Tsoi accepted that this may at first seem strange.

But he added: There may be circumstances in which the applicant is out of a job, having just completed his employment contract, or is alone in Hong Kong with no family members here. We would like to know his plan which may indicate his intention to take Hong Kong as his only place of residence.

Principal Assistant Secretary for Security Linda So said applicants who spent time outside Hong Kong should not worry unduly about the new requirement to take Hong Kong as their only place of permanent residence.

Absence needs to be assessed in terms of the duration, frequency and nature. There were many different reasons for going abroad, whether to work, study, or look after sick relatives. Each case would be considered individually.

Mr Tsoi said efforts were being made to ensure applications were dealt with speedily and that the process was user-friendly. Before the court judgment, two applications had to be made, one to have conditions of stay lifted and another for permanent residency. Now only the latter is required.

The supporting documentation needed would vary from case to case, he said. I have given a direction to my staff to keep it to the minimum . . . in some cases we ask for a little bit more.

The Basic Law states that non-Chinese nationals are entitled to become permanent residents if they have entered Hong Kong with valid travel documents, ordinarily lived in the city for a continuous period of at least seven years, and have taken Hong Kong as their place of permanent residence. It is the permanence requirement which has been adjusted by immigration officials to take into account the court ruling.

These changes come at a time when non-Chinese nationals are worried about other immigration reforms seen as favouring mainlanders at foreigners' expense.

On June 30, mainland professionals entering Hong Kong were allowed to bring their spouses and unmarried children with them for the first time. On the same day it was announced that all dependants, including non-Chinese nationals, would be required to seek permission from the director of immigration if they wanted to work or set up businesses.

Previously, expatriates had not needed permission. The reforms, which affect only people applying for a dependency visa from July 1, prompted criticism from some foreign business chambers which argued they would deter professionals from overseas from coming to Hong Kong. But Ms So said the restrictions applied equally to everyone and were aimed at ensuring only people with scarce skills would be allowed to work.

There seems to be some misunderstanding in the expatriate community that the new policy implemented by the government seems to be favouring mainlanders at the expense of foreign professionals, she said. This is an absolute fallacy. The policy is to keep our doors open for all talents and professionals, whether foreigners or mainlanders, as long as they possess skills which are scarce in Hong Kong. Expatriates are as welcome here as they have ever been.

Editorial - A12

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Welcome mat frays at the edges

A Canadian lawyer is seeing his victory defending the rights of permanent-residency applicants overshadowed by new immigration rules, writes *Cliff Buddle*

When lawyer Mark Daly filed his application to become a permanent resident of Hong Kong, he included one document the immigration authorities had not been expecting. Along with the usual tax records and photocopies of his passport was a landmark court judgment he had helped win earlier that day.

The 39-year-old Canadian human rights specialist expected the ruling in favour of his Indian client to help smooth the passage of his own claim for a coveted permanent identity card – and those of all non-Chinese nationals claiming the right of abode. After all, the Court of Final Appeal had removed from the government a long-standing power to decide who can apply.

But instead, the Immigration Department's reaction was to put all applications – more than 5,000 of them – on hold and then to introduce changes to its procedures that Mr Daly fears will place more obstacles in the way of expatriates seeking to cement their status as Hong Kong residents.

The case raises questions about what it means for a foreign national to become a Hong Kong citizen and what people from overseas need to do to convince the authorities they regard the city as their home. It comes at a time when concerns exist about other recent changes to immigration rules that will, for the first time, require spouses and children of non-Chinese nationals to seek permission before taking up work or starting a business.

Officials assure the expatriate community there is nothing to worry about. But Mr Daly is not so sure. "It sends out the wrong message. We should be sending out the message that we welcome such people," he says.

Mr Daly's client was an Indian national who had come to Hong Kong in 1988 but had been refused a permanent identity card when he applied 10 years later. The case raised several important legal issues. One of them was whether the director of immigration could insist that only those applicants whose conditions of stay had been lifted by him could become permanent residents. All expatriates wanting the right of abode had to first apply for their conditions of stay to be lifted. This, argued Mr Daly, was unconstitutional because it gave the immigration chief the power to decide who would be allowed to apply for a right that is guaranteed by the Basic Law.

By the time the case was heading to the top court, Mr Daly had himself clocked up seven years continuous residence, qualifying him to become a permanent resident. "By then, I knew it was going to be relevant to my own situation and was quite optimistic we were going to win. I had all my documents prepared. Knowing a little bit about this area, I had been quite meticulous in getting them ready."

His optimism proved well placed.

When the court handed down its judgment on February 11 this year, it ruled in favour of Mr Daly's client. The requirement that all conditions of stay be lifted was found to be unconstitutional. In future, expatriates would only have to make one application, not two. Mr Daly was thrilled for his client. "My thoughts were primarily for him and the injustice he had suffered," he says. But after leaving court the lawyer quickly attended to his own application. He sent it off along with a copy of the judgment and a letter explaining that his claim, and all those that followed, would have to be treated in accordance with the ruling. "It was satisfying to attach the judgment and state to them that their forms would have to be changed."

But he was not prepared for what happened next. "I hoped the decision would simplify things. But time went on and nothing happened. The visa in my passport was due to expire in July. Then I got a letter saying they were looking at the judgment and were going to change things." The letter said it was going to take longer.

Mr Daly was not the only applicant to receive one. About 5,000 pending claims for permanent residency were put on hold as the immigration department sought legal advice and pondered how to react.

The letter gave a clue to what would follow. It quoted a part of the judgment that stated applicants must satisfy the director of immigration they had taken "concrete steps" to make Hong Kong alone their place of permanent residence. "Alarm bells immediately started ringing. It came as a complete surprise," says Mr Daly. "I wondered what they were going to do."

What seemed to be troubling the immigration authorities were a few paragraphs in the judgment that go to the heart of what it means to become a Hong Kong permanent resident. Mr Justice Robert Ribeiro, giving the majority ruling of the court, had expanded upon the meaning of words to be found in the Basic Law. The mini-constitution sets out three requirements for non-Chinese nationals wanting to become permanent residents. They must have entered Hong Kong with valid travel documents, lived here for a continuous period of at least seven years and to have "taken Hong Kong as their place of permanent residence".

The procedures had previously focused on these words. But Mr Justice Ribeiro developed their meaning. He said: "The permanent residence requirement makes it necessary for the applicant to satisfy the director both that he intends to establish his permanent home in Hong Kong and that he has taken concrete steps to do so. This means the applicant must show... he intends and has taken action to make Hong Kong, and Hong Kong alone, his place of permanent residence."

Finally, on June 16, a new approach

was quietly put into practice and the backlog of applications began to be processed accordingly. The declaration that applicants must sign was changed. They now have to pledge to take Hong Kong as their *only* place of permanent residence. The documents required by the department to support this vary widely from case to case. Mr Daly was

asked to provide the bare minimum – his identity card and passport. But others have faced requests for all sorts of documentation ranging from proof that they own property here to the marriage certificate of their parents and even their career plan.

"People here do tend to split their time between different places," says Mr Daly. "They have business here, and business elsewhere. If the requirement is now that Hong Kong must be their

only place of permanent residence, is such a person going to have to change their activities?" The request for a career plan is also a concern, he adds. "How are they going to vet this? It leaves too much discretion in the hands of lower level immigration officers in deciding these things."

Both the Immigration Department and Security Bureau have sought to reassure the expatriate community that there is no need for concern. Tsoi Hon-kuen, an assistant director of immigration, says applicants who own property

abroad should not be concerned that this would jeopardise their claims. "Many Hong Kong people have a lot of property overseas. It does not affect their intention to take Hong Kong as their only place of residence," he says. "But I can't give you an exact formula as to how to process these applications."

Mr Tsoi admits the request for some applicants to provide their career plans may at first seem strange, but there is a logic behind it. "There may be circum-

stances in which the applicant is out of a job, having just completed his employment contract, or is alone in Hong Kong with no family members here. We would like to know his plan, which may indicate his intention to take Hong Kong as his only place of residence."

The immigration officer says 2,700 applications have been processed since the new procedures were put in place. The debate about the new procedures follows changes to the rules relating to dependency visas, which were announced on June 30.

From July 15, mainland professionals have been allowed to enter Hong Kong on the same basis as those from overseas. Previously only immigrants from certain sectors on the mainland had been accepted. For the first time, mainland professionals are also allowed to bring their spouses and children. It is all part of Hong Kong's bid to attract more talent to the city to help stimulate the economy. The catch is that the spouses and children are not automatically entitled to seek employment or start businesses here.

In a related change, the rules relating to expatriates here on dependency visas have been tightened. Previously, they had been allowed to work or start a business without seeking permission. But from July 1, new expatriate applicants for dependency visas who wish to work have had to apply to the immigration department and show they have skills that are scarce in Hong Kong.

Principal Assistant Secretary for Security Linda So says the decision was made as part of an overall review of the dependency visa rules, and that it is an "absolute fallacy" to suggest mainlanders are being favoured at the expense of expats. "Hong Kong is an international city and the policy is to keep our doors open for all talents and professionals whether foreigners or people from the mainland. As long as they possess skills that are scarce in Hong Kong, they are all welcome to work here."

The changes are based on the principle that at a time of high unemployment only those with the type of expertise required should be allowed to work here, she adds. It is also felt that the rules should be the same for mainland people and expatriates. "There should be no discrimination or bias."

But the argument that the change will help the unemployment situation is questionable. Ms So admits there is no detailed statistical basis for such an assumption. "We don't have statistics compiled on the professionals with dependants. The profile of the dependants of mainland people is a big uncertainty." As for the new scheme, she says it is still too early to gauge its impact on the local employment picture. Ms So also denies that the recent changes will deter expatriates from choosing Hong Kong. "I think the primary consideration for an investor or a professional is their business and career prospects. Whether or not their spouse can work may be a secondary consideration."

But the change to the rules for dependency visas has upset foreign chambers of commerce, which feel it could make Hong Kong less attractive. Last month, those representing Australia, Canada, Britain, the United States and Sweden met immigration department officials to express concerns.

Mr Daly's application was successful after all – he picked up his new ID card on July 29 – though the experience has caused him to ponder on the nature of being a Hong Kong permanent resident. He came here to work in 1995, having been married in Canada to a Chinese lawyer. Their son, Connor, was born here three years ago. "I think it is a philosophical question. National borders are not so important," he says. "It takes time. My son speaks to taxi drivers in Cantonese and I don't understand what he is saying. In that way, I suppose I will always feel more at home in Canada. But there are other times when I certainly feel a sense of belonging in Hong Kong."

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Residency seekers take it personally

10 AUG 2003

Kelvin Chan

Expatriates seeking permanent residency are being asked if they have a Hong Kong Chinese girlfriend or can speak Cantonese, renewing fears over a tougher approach by the authorities after a recent court ruling.

Immigration chiefs have launched an internal investigation after several people applying for permanent residency approached the *Sunday Morning Post* with complaints about the questions that were being asked.

In the wake of a court ruling earlier this year, expatriates applying for residency now face stricter procedures requiring them to show they have taken "concrete steps" to make Hong Kong their only home.

In Roderick Pratt's case, that meant being questioned by his Immigration Department case officer on whether he had a Hong Kong-born Chinese girlfriend, if he could speak Cantonese, or if he was in-

involved in community work which might have brought him in close contact with Hong Kong Chinese.

"I'm amazed, astonished," said Mr Pratt, who has lived and worked in Hong Kong since December 1995, said. "How personal do they want to be?"

Mr Pratt has worked as a surveyor at the airport, in public relations and as an English teacher at a school near Tai Wai until resigning in November. He is now unemployed but has had several interviews for teaching jobs.

The 51-year-old Briton applied for permanent residency in April, three months after a Court of Final Appeal ruling removed the unconstitutional requirement that the director of immigration must lift conditions of stay before an application can be made.

After the ruling, the department changed its procedures. It now requires applicants to declare Hong Kong is their only home and asks for proof of property ownership,



Roderick Pratt: astonished

and about their family and career plans.

On July 14, Mr Pratt's case worker called to get more information. After asking whether he owned property in Hong Kong (he doesn't, but may sell his cottage in England to buy a flat here), she asked: "Do you have a Hong Kong Chinese girlfriend with a view to marriage?"

Taken by surprise, Mr Pratt

asked her to repeat the question and then wondered whether it was a requirement. The case officer said no but it would help his case.

She then asked whether he was involved in local voluntary work or was a member of an association or club that involved "face-to-face situations dealing with Hong Kong Chinese people". Mr Pratt said he wasn't.

She then asked whether he could speak Chinese or had taken lessons, to which he replied he knew some basic phrases and courtesies.

The Immigration Department has described the questions as "certainly not appropriate", saying it would investigate what happened. But the *Post* has learned of several similar examples.

Immigration experts said the new questions seemed to indicate confusion in the Immigration Department on how to process applications for permanent residency following the court ruling.