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Subcommittee on Rights of Ethnic Minorities

**Information note prepared by the Legislative Council Secretariat
for the meeting on 7 May 2018**

**Difficulties encountered by ethnic minorities in applying
for the Hong Kong Special Administrative Region Passport**

Issues relating to difficulties encountered by ethnic minorities ("EMs") in applying for the Hong Kong Special Administrative Region ("HKSAR") Passport were raised in the context of discussion by the Panel on Constitutional Affairs ("the Panel") on the Third Report of HKSAR under the International Covenant on Economic, Social and Cultural Rights at its meeting on 17 February 2014. At the meeting, Hon Albert HO expressed concern that many EM persons born in Hong Kong had encountered difficulties in obtaining HKSAR passports although they had lived in Hong Kong for generations. He called on the Administration to review its policy to address the problem.

2. The Administration explained that pursuant to section 3(2) of the HKSAR Passports Ordinance (Cap. 539), the Director of Immigration would not issue a passport to the applicant unless the applicant had satisfied all of the following conditions:

- (a) he/she is a Chinese citizen;
- (b) he/she is a permanent resident of HKSAR; and
- (c) he/she is a holder of a valid permanent identity card as defined in section 1A of the Registration of Persons Ordinance (Cap. 177).

Acquisition of Chinese nationality is therefore a prerequisite for obtaining a HKSAR Passport. The Administration further advised that the Immigration Department handled applications for naturalization as a Chinese national submitted in HKSAR in accordance with the Nationality Law of the People's Republic of China¹ ("CNL") and the "Explanations of Some Questions by the

¹ Pursuant to Article 18 of and Annex III to the Basic Law, CNL has been applied in HKSAR since 1 July 1997.

Standing Committee of the National People's Congress Concerning the Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region". At the request of the Panel, the Administration has provided supplementary information in writing (see **Appendix I**).

3. Hon Claudia MO also raised an oral question on applications for naturalization as Chinese nationals at the Council meeting of 12 December 2012. Ms MO's question and the Administration's reply are in **Appendix II**.

4. The Subcommittee will discuss the difficulties encountered by EMs in applying for the HKSAR Passport at the next meeting on 7 May 2018.

Council Business Division 2
Legislative Council Secretariat
30 April 2018

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
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17 March 2014

Clerk to Panel on
Constitutional Affairs
Legislative Council,
Legislative Council Complex,
1 Legislative Council Road,
Central, Hong Kong
(Attn: Ms Joanne Mak)

By Fax
(Fax: 2509 9055)

Dear Ms Mak,

Legislative Council Panel on Constitutional Affairs
The Third Report of the Hong Kong Special Administrative Region
(HKSAR) under the International Covenant on Economic, Social and
Cultural Rights (ICESCR)
Follow-up Item

At the meeting of the Legislative Council Panel on Constitutional Affairs on 17 February 2014, the Hon Albert HO Chun-yan expressed concerns on problems encountered by non-Chinese ethnic minorities born in Hong Kong in obtaining HKSAR passports. This sets out the Administration's response.

Pursuant to section 3(2) of the HKSAR Passports Ordinance (Cap. 539), the Director of Immigration shall not issue a passport to the applicant unless the applicant has satisfied all of the following conditions –

- (i) he is a Chinese citizen;
- (ii) he is a permanent resident of the HKSAR; and
- (iii) he is a holder of a valid permanent identity card as defined in section 1A of the Registration of Persons Ordinance (Cap. 177).

Acquisition of Chinese nationality is therefore a prerequisite for obtaining a

HKSAR passport.

Pursuant to Article 18 of and Annex III to the Basic Law of the HKSAR of the People's Republic of China, the Nationality Law of the People's Republic of China (CNL) has been applied in the HKSAR since 1 July 1997. The Immigration Department (ImmD) handles applications for naturalization as a Chinese national submitted in the HKSAR in accordance with the CNL and the "Explanations of Some Questions by the Standing Committee of the National People's Congress Concerning the Implementation of the Nationality Law of the People's Republic of China in the HKSAR (Explanations)".

Pursuant to Article 7 of the CNL, foreign nationals or stateless persons who are willing to abide by China's Constitution and laws and who meet one of the following conditions may be naturalised upon approval of their applications –

- (i) they are near relatives of Chinese nationals;
- (ii) they have settled in China; or
- (iii) they have other legitimate reasons.

Article 8 of the CNL stipulates that any person who applies for naturalisation as a Chinese national shall acquire Chinese nationality upon approval of his application; a person whose application for naturalisation as a Chinese national has been approved shall not retain foreign nationality.

The ImmD will consider each application for naturalisation as a Chinese national on its own merits and will in general give consideration to the following factors –

- whether the applicant has a near relative who is a Chinese national having the right of abode in Hong Kong;
- whether the applicant has the right of abode in Hong Kong;
- whether the applicant's habitual residence is in Hong Kong;
- whether the principal members of the applicant's family (spouse and minor children) are in Hong Kong;
- whether the applicant has a reasonable income to support himself/herself and his/her family;
- whether the applicant has paid taxes in accordance with the law;
- whether the applicant is of good character and sound mind;
- whether the applicant has sufficient knowledge of the Chinese

- language;
- whether the applicant intends to continue to live in Hong Kong in case the naturalisation application is approved; and
- whether there are other legitimate reasons to support the application.

Each application for naturalisation as a Chinese national will be handled on its individual merits. The ImmD will consider the naturalisation applications in accordance with Articles 7 and 8 of CNL and the aforementioned factors on a fair and appropriate basis. The nationality of the applicant and whether he/she has Chinese bloodline are not factors for consideration.

From 2009 to 2013, the ImmD has received 6 528 applications for naturalization as Chinese nationals, of which 4 699 were approved, 1 107 not approved, and 99 withdrawn. The top five original nationalities of applicants whose naturalization applications were approved during the same period are Indian, Indonesian, Pakistani, Vietnamese and Filipino. The application and approval figures are set out below –

Original Nationality	Number of Applications for Naturalization as Chinese Nationals ⁽¹⁾	Number of Approvals for Naturalization as Chinese Nationals ⁽²⁾
Indian	1 642	1 293
Indonesian	1 252	1 127
Pakistani	1 465	892
Vietnamese	831	535
Filipino	438	320
Others	900	532
Total	6 528	4 699

Notes:

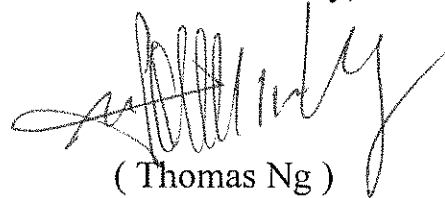
(1) Some applications are still under process.

(2) Number of approvals refers to those applications with certificate of naturalization issued.

All applications for naturalization as a Chinese national are processed in accordance with the laws of Hong Kong. As stated in section 5(1)(a) of the Chinese Nationality (Miscellaneous Provisions) Ordinance (Cap. 540), where in connection with any nationality application any discretion may be exercised under or pursuant to any of the provisions of the CNL, as implemented in the HKSAR in accordance with the Explanations, the discretion shall be exercised without regard to the race, colour, or religion of any person who may be

affected by its exercise. This provision applies to the naturalisation applications handled by the ImmD, including those from stateless persons.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Ng', written in a cursive style.

(Thomas Ng)

for Secretary for Security

cc:

Secretary for Constitutional and Mainland Affairs

(Attn: Mr Michael Yau)

Fax no.: 2840 0657

Director of Immigration

(Attn: Mr Isaac So)

Fax no.: 2824 1675

Appendix II

Press Releases

LCQ2: Applications for naturalisation as Chinese nationals

Following is a reply by the Secretary for Security, Mr Lai Tung-kwok, to a question by the Hon Claudia Mo in the Legislative Council today (December 12):

Question:

Some organisations that offer assistance to residents from the ethnic minorities have relayed to me that the Immigration Department (ImmD) always finds fault with ethnic minority residents (especially the Southeast Asians, South Asians and Africans who have dark skin colour) applying for naturalisation as Chinese nationals, and the process and criteria for vetting and approving such applications lack transparency. These ethnic minority residents have been residing in Hong Kong for a long time and regard Hong Kong as their home, but their applications for naturalisation as Chinese nationals have been refused. They are therefore not eligible for applying for the Hong Kong Special Administrative Region (HKSAR) passports as well. Such a situation not only undermines their sense of belonging to Hong Kong, but also very often causes them inconvenience when they go through immigration clearance while travelling, working or studying abroad. Also, they may be unable to receive assistance or protection from the Chinese consulates in the event of natural or man-made disasters encountered abroad. In this connection, will the Government inform this Council:

(a) whether ImmD has formulated internal guidelines on vetting and approving applications for naturalisation as Chinese nationals to ensure that applicants of different ethnicity are treated fairly; if it has, of the details; if not, the reasons for that; whether ImmD will, when vetting and approving applications for naturalisation as Chinese nationals, take into consideration if the applicants are stateless persons, if they are non-ethnic Chinese children lawfully adopted by ethnic Chinese Hong Kong residents, as well as if they are of Chinese descent;

(b) of the specific details of the rejected applications for naturalisation as Chinese nationals by non-ethnic Chinese Hong Kong residents each year since the establishment of the Hong Kong Special Administrative Region, including the number of applications received by ImmD and the number rejected (with a breakdown by the ethnicity of the applicant and the reason for rejecting the application); and

(c) given that section 5(1)(b) of the Chinese Nationality (Miscellaneous Provisions) Ordinance stipulates that "any decision to approve or refuse the nationality application in the exercise of the discretion there shall be no need to assign any reason for the decision", whether the authorities will consider amending the provision, providing the applicants with the reasons for rejecting their applications, as well as putting in place an appeal mechanism; if they will, of the details; if not, the reasons for that?

Reply:

President,

The reply is as follows:

(a) According to Article 18 of and Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR), the Nationality Law of the People's Republic of China (CNL) shall be applied in the HKSAR from July 1, 1997. The Explanations of Some Questions by the Standing Committee of the National People's Congress Concerning the Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region (Explanations) have been endorsed by the Standing Committee of the National People's Congress and the Government of HKSAR is authorised to designate its Immigration Department (ImmD) to handle applications related to Chinese nationality in the HKSAR in accordance with the CNL and the Explanations. Furthermore, the Government of HKSAR enacted the Chinese Nationality (Miscellaneous Provisions) Ordinance (Chapter 540) in 1997 to stipulate the implementation details of naturalisation, form of application, charges, etc.

Pursuant to Article 7 of the CNL, foreign nationals or stateless persons who are willing to abide by China's Constitution and laws and who meet one of the following conditions may be naturalised upon approval of their applications:

- (1) they are near relatives of Chinese nationals;
- (2) they have settled in China; or
- (3) they have other legitimate reasons.

Article 8 of the CNL stipulates that any person who applies for naturalisation as a Chinese national shall acquire Chinese nationality upon approval of his application; a person whose application for naturalisation as a Chinese national has been approved shall not retain foreign nationality.

ImmD will consider each application for naturalisation as a Chinese national on its own merits and will in general give consideration to the following factors:

- * whether the applicant has a near relative who is a Chinese national having the right of abode in Hong Kong;
- * whether the applicant has the right of abode in Hong Kong;
- * whether the applicant's habitual residence is in Hong Kong;
- * whether the principal members of the applicant's family (spouse and minor children) are in Hong Kong;
- * whether the applicant has a reasonable income to support himself/herself and his/her family;
- * whether the applicant has paid taxes in accordance with the law;
- * whether the applicant is of good character and sound mind;
- * whether the applicant has sufficient knowledge of the Chinese language;

* whether the applicant intends to continue to live in Hong Kong in case the naturalisation application is approved; and

* whether there are other legitimate reasons to support the application.

Besides, as stated in section 5(1)(a) of the Chinese Nationality (Miscellaneous Provisions) Ordinance, where in connection with any nationality application any discretion may be exercised under or pursuant to any of the provisions of the CNL, as implemented in the HKSAR in accordance with the Explanations, the discretion shall be exercised without regard to the race, colour or religion of any person who may be affected by its exercise. This provision applies to the naturalisation applications handled by ImmD, including those from stateless persons, non-ethnic Chinese children being legally adopted by Hong Kong ethnic Chinese couples, and non-ethnic Chinese residents.

(b) From the establishment of the HKSAR (i.e. July 1997) to November 2012, ImmD has received 15,518 applications for naturalisation as Chinese nationals, of which 12,658 were approved, 1,293 not approved, and 193 withdrawn. The yearly breakdown is in Table I.

The original nationality of applicants whose naturalisation applications were approved from July 1997 to November 2012 is mainly Pakistani, Indonesian, Indian, Vietnamese and Filipino. Detailed application and approval figures are in Table II.

ImmD does not maintain statistics on refusal reasons.

(c) Section 5(1)(b) of the Chinese Nationality (Miscellaneous Provisions) Ordinance applies only to decisions in the exercise of discretion. In exercising discretion to handle applications for naturalisation as a Chinese national, ImmD often needs to consider information such as whether the applicants are of good character. Therefore, it is not appropriate to disclose the reasons behind the decision. The decisions made after considering the above factors are in the exercise of discretion, rather than findings of the law or facts. If an appeal mechanism is set up for this kind of decisions, the final decision will be made by the appellate authority instead of ImmD, which is designated by the Government of HKSAR as authorised by the Explanations. Moreover, pursuant to section 5(2) of the Ordinance, nothing in this section affects the jurisdiction of any court to entertain proceedings of any description concerning the rights of any person under the CNL.

Applicants who are not satisfied with the outcome of the applications may request ImmD in writing to reconsider their applications. All reconsiderations will be handled on a fair basis.

Ends/Wednesday, December 12, 2012
Issued at HKT 15:26

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Table I to LCQ2

Applications for Naturalisation as Chinese Nationals and Results

	No. of Applications	Approved	Not Approved	Withdrawn
1997 (Jul to Dec)	30	0	0	0
1998	240	157	4	3
1999	251	281	4	16
2000	409	309	6	6
2001	360	327	5	6
2002	560	457	5	12
2003	702	635	24	22
2004	1,342	1,209	56	13
2005	1,719	1,354	47	8
2006	1,840	1,787	6	26
2007	1,567	1,538	38	23
2008	1,541	1,237	239	9
2009	1,295	955	222	13
2010	1,263	729	124	11
2011	1,219	940	356	13
2012 (Jan to Nov)	1,180	743	157	12
Total	15,518	12,658	1,293	193

Remarks:

(1): The number of applications in a particular year would in general not correspond exactly with the number of cases approved, not approved or withdrawn in that year because the cases may not necessarily be submitted and determined in the same year.

(2): “Approved” refers to those applications with certificate of naturalisation issued.

(3): “Withdrawn” refers to those applications being withdrawn by applicants or could not be processed further because of insufficient information provided by applicants

Table II to LCQ2

Top Five Original Nationalities of Applicants Naturalised as Chinese Nationals (from Jul 1997 to Nov 2012)

Original Nationality	No. of Applications for Naturalisation as Chinese Nationals	No. of Approvals for Naturalisation as Chinese Nationals
Pakistani	4,536	3,411
Indonesian	3,786	3,399
Indian	3,224	2,487
Vietnamese	1,593	1,115
Filipino	570	387

Remarks:

Number of approvals refers to those applications with certificate of naturalisation issued.