立法會
Legislative Council

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(These minutes have been seen by the Administration)

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LegCo Panel on Security

Minutes of special meeting
held on Tuesday, 18 January 2000 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present	:	Hon James TO Kun-sun (Chairman) Hon Mrs Selina CHOW LIANG Shuk-yee, JP (Deputy Chairman) Hon David CHU Yu-lin Hon CHEUNG Man-kwong Hon Gary CHENG Kai-nam, JP Hon Howard YOUNG, JP Hon Andrew CHENG Kar-foo
Member attending	:	Hon Margaret NG
Members absent	:	Hon Albert HO Chun-yan Dr Hon LUI Ming-wah, JP Hon LAU Kong-wah
Public Officers attending	:	Mr Timothy TONG Deputy Secretary for Secretary Miss Cathy CHU Principal Assistant Secretary for Security Mr P T CHOY Deputy Director of Immigration Mr P K LEUNG Principal Immigration Officer

Clerk in attendance	:	Mrs Sharon TONG Chief Assistant Secretary (2)1
Staff in attendance	:	Mr Raymond LAM Senior Assistant Secretary (2) 5

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I. Follow-up on application and verification procedures for a Certificate of Entitlement and related issues
(LC Paper No. CB(2) 855/99-00)

Miss Margaret NG declared interest as one of the legal representatives of overstayers involved in cases relating to the execution of removal orders by the Director of Immigration (D of Imm) against 17 Mainland overstayers who claimed to be permanent residents of Hong Kong Special Administrative Region (HKSAR) under Article 24(2)(3) of the Basic Law (BL24(2)(3)).

2. At the invitation of the Chairman, Deputy Secretary for Security (DS for S) presented the Administration's paper on the current position of applications for Certificate of Entitlement (C of E) by Mainland residents, the repatriation of overstayers and illegal immigrants (IIs), and the arrangements for genetic test to verify the parentage of right of abode (ROA) claimants. He informed members that -

(a) as the daily number of persons issued C of E were higher than the daily number of persons issued One-way Permit, ROA claimants who had been issued C of E would have to wait for some time before they could come to Hong Kong;

(b) between 17 July 1999 and 31 December 1999, the Immigration Department (ImmD) received a total of 20 157 C of E applications referred from the Public Security Bureau Offices of the Mainland. Applications from persons born out of wedlock of Hong Kong permanent residents were not included in this figure; and

(c) by 17 January 2000, 667 Mainland overstayers and IIs claiming ROA had voluntarily returned to the Mainland. 41 overstayers/IIs were repatriated on removal orders and 43 ROA claimants were detained pending removal.

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3. DS for S said that the information contained in paragraph 7 and 8 of the Administration's paper were supplied by the Bureau of Exit-Entry Administration (BEEA) of the Mainland. The Administration had not yet received the first batch of applications from persons born out of wedlock of Hong Kong permanent residents. Deputy Director of Immigration (DD of Imm) added that it was estimated that about 3 700 ROA claimants might not be affected by the interpretation of the Standing Committee of the National People's Congress of BL22(4) and BL24(2)(3) on 26 June 1999 (NPCSC's interpretation). Among these, about 1000 persons had already acquired ROA. 360 out of another 900 persons who were in Hong Kong at that time had been issued identity cards. Among 2 000 persons who had returned to the Mainland, 700 had already come to Hong Kong legally. The Administration had provided information about the remaining persons to the Mainland authorities. It was expected that these persons would be able to come to Hong Kong soon after their cases had been verified.

Genetic tests

4. The Chairman said that the Administration had previously indicated that legislative amendments relating to genetic tests would be introduced into the Legislative Council (LegCo) in October 1999. He questioned why the introduction had been delayed. DS for S responded that about four to five bureaux and departments of the Administration, including the Security Bureau, the Department of Justice and Government Laboratory, had spent some time in working out the preliminary arrangements and passed them to BEEA before October 1999 for consideration. Feedback was received at the end of 1999 that an internal study and consultation held by an expert team of BEEA were close to completion. The Director of BEEA would visit Hong Kong in early 2000 to discuss with D of Imm, amongst other things, practical arrangements between the Mainland authorities and the Government of HKSAR to conduct genetic test. Subsequent expert talks might be held on the details of implementation. He hoped that an agreement would be reached soon.

5. Mr CHEUNG Man-kwong expressed concern that the genetic test might be open to abuse if there were loopholes in the system or process of carrying out the test. He considered that as Hong Kong would ultimately receive these persons, the final genetic test should be performed in Hong Kong so as to prevent any abuse arising from corruption of individual officers in the Mainland. He also asked whether Hong Kong could require a retest. DS for S responded that while the detailed arrangements would not be finalized until expert talks with BEEA had been completed, the Administration considered it important to maintain close co-operation with the Mainland authorities in ensuring the reliability of the genetic test. He added that it was also important for the arrangements to be adequately transparent and widely acceptable. In this respect, the Independent Commission Against Corruption (ICAC) had been consulted on the proposed arrangements. The Administration considered that a decision on whether a genetic test was required should be based on whether there was sufficient evidence to prove the parentage. If there was sufficient evidence to prove the parentage, there might not be a need to conduct a genetic test.

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6. The Chairman asked whether the Administration had ruled out the possibility of requiring all genetic tests to be performed in Hong Kong. He considered that an officer from ImmD could be sent to the Mainland to take a photograph of the applicant, obtain finger-prints and a buccal swab for genetic test. The buccal swab could then be assigned an identification number and sent to Hong Kong for genetic test. He said that people would have better confidence in the arrangement if all work related to genetic test was performed in Hong Kong. DS for S noted the Chairman's views. He said that the Administration had looked into the issue and considered that having regard to the vast area of the Mainland and deployment of resources, it would be necessary to appoint BEEA as HKSAR Government's agent in the Mainland. He stressed that genetic test was only part of the verification process. It was not a usual practice to isolate one particular step to be performed in Hong Kong, it being necessary for the Administration to have regard to efficiency of work, and bearing in mind that it would be very difficult for an officer from ImmD to verify the identify of and information submitted by an applicant in the Mainland.

7. In response to Mrs Selina CHOW, DS for S said that according the opinion of experts, the cost of a genetic test would be about $3,000 or more.

8. Mrs Selina CHOW said that it was important for genetic test to be reliable and free from corruption. The Chairman suggested that consideration be given to requiring officers of the Administration to be present at the scene whenever samples for genetic test and fingerprint were taken from the applicant concerned. An applicant could be asked to undergo a genetic retest and fingerprint verification upon his entry into Hong Kong for confirmation of his or her identity. DS for S reiterated that the reliability of genetic test was one of the Administration's concerns for the arrangements. ICAC had been consulted on the proposed arrangements. The Administration had look into details such as whether containers of the samples collected should bear none of the applicant's personal particulars but only an identification code number only.

Legal aid for ROA claimants

9. Mr CHENG Kai-nam sought clarification on some recent reports that once an ROA claimant had applied for legal aid, the claimant could not be detained by ImmD until the results of the application were available. DS for S responded that while he was not in a position to comment on individual cases, the claiming of ROA in Hong Kong would not of itself constitute a sufficient reason for a claimant not to be repatriated to the Mainland. He stressed that the Administration was committed to the implementation of NPCSC's interpretation. As explained in the Administration's paper for the special House Committee meeting on 28 June 1999, persons who were in Hong Kong and lodged claims for ROA with D of Imm between 1 July 1997 and 10 July 1997 or between 11 July 1997 and 29 January 1999 were not affected by NPCSC's interpretation. Other ROA claimants were subject to NPCSC's interpretation and therefore should return to the Mainland to apply for a C of E. However, some of these persons had been granted legal aid and were involved in court proceedings

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relating to their ROA. These persons would not be repatriated until their court cases were over. He added that about 10 Mainland overstayers who claimed to be permanent residents of HKSAR under BL24(2)(3) were not detained because they were involved in court proceedings. As regards the 43 ROA claimants who were detained pending removal, they would not be detained or removed if they were involved in legal proceedings in respect of their ROA claims. D of Imm was examining whether their respective situation was the same as that of the 10 Mainland overstayers involved in court proceedings relating to their ROA. If the situation of these ROA claimants was the same as those of the 10 Mainland overstayers, consideration would be given to whether there was still sufficient reason for detaining these ROA claimants.

10. In response to Mr CHENG Kai-nam's question on whether a detained II would be released if he claimed that he was applying for legal aid during detention, DD of Imm said that an application for legal aid would not constitute sufficient ground for not repatriating or detaining the II. Nevertheless, ImmD would liaise with the Legal Aid Department (LAD) on whether legal aid would be provided to the II concerned. If legal aid would be provided, the II would not be removed from Hong Kong in the meantime until the court case was over. Mr David CHU considered that this might encourage more IIs to come to Hong Kong. DD of Imm responded that if an II applied for legal aid during detention, ImmD would inform LAD of the intention to repatriate an II at 9:30 am on the day before repatriation took place. LAD would then reply before 2:30 pm of the same day whether legal aid would be granted to the II concerned. The II would be repatriated on the next day if legal aid was not to be granted. If legal aid was to be granted, consideration would be given to releasing the II. As regards overstayers, he said that LAD would be given four days to advise on whether legal aid would be granted.

11. Miss Margaret NG said that it was not easy for legal aid to be granted to a person. It was a requirement in law that the granting of legal aid to a person should only be made on sufficient grounds. Even where legal aid had been granted to a person, it could still be stopped at any stage when LAD considered that such aid should no longer be granted. Under such circumstances, the II concerned would be repatriated unless he chose to continue with the court proceedings at his own expenses. She stressed that an II who was involved in a court proceeding about his ROA claim should not be deprived of the right to appear before the court and present his arguments.

12. DS for S said that there was a recent request which stated that the 43 persons detained and pending removal should be released or otherwise legal aid would be sought for these persons. The request also said that LAD had advised that a person could not be repatriated once legal aid was granted to him. DS for S stressed that from a security point of view, D of Imm had a responsibility to take account of the overall immigration situation. Conveying a wrong message that an II could not be repatriated once he succeeded in seeking legal aid for court proceedings on his ROA claim might result in a massive influx of IIs and large number of overstayers. He said that about three to four million Mainlanders had visited Hong Kong after 1 July 1997, and just 5% of these visitors would make a very large number if they were to stay.

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Persons born out of wedlock and persons born out of registered marriage

13. The Chairman asked why there was only a total of about 500 applications received so far by BEEA for exit to Hong Kong for settlement from persons born out of wedlock of Hong Kong permanent residents. He asked whether the substantially larger number provided at previous special House Committee meetings was an overestimation. He also asked whether there was suppression of applications by the Mainland authorities. DD of Imm responded that the figure provided by BEEA was related to persons born out of wedlock of Hong Kong residents, while the substantially larger number provided at previous special House Committee meetings was an estimation of persons born out of registered marriage. The latter category would become persons born of registered marriage if their parents re-registered their marriage. He said that to his knowledge, adequate publicity had been made by the Mainland authorities. A number of applicants might be choosing to watch for some time before lodging their application. DS for S added that the Administration had learnt that a large number of enquiries regarding the issue had been received by the Mainland authorities.

14. Mr CHEUNG Man-kwong expressed concern that the parents of persons born out of registered marriage could re-register their marriage. He considered that the arrangement might be open to abuse. To his knowledge, there were many mock marriages in Hong Kong in the past. Parents of persons born out of registered marriage might re-register their marriage in order to waive their children from the requirement of undergoing a genetic test. DD of Imm responded that a decision on whether a genetic test was required would depend on whether there was sufficient evidence of parentage. Re-registration of marriage by an applicant's parents would not constitute a sufficient reason for waiving the applicant from undergoing a genetic test. More information would usually be sought from applicants whose parents re-registered their marriage. Mr CHEUNG expressed concern that in view of the vast area of the Mainland, there might be some places where requirements on re-registration of marriage was very loose. DS for S said that a decision on whether genetic test would be required would depend on the evidence submitted, such as proof of relationship between the parents, proof of parentage between the applicant and his parents, and other information such as declarations from the elders of a village and immigration records. He stressed that mere re-registration of marriage alone was not necessarily sufficient for proving parentage.

15. In response to Mr Howard YOUNG's question on the status of persons born of parents who resided in the Mainland and subsequently divorced and one of his parents came to reside in Hong Kong, DS for S said that a person born in the Mainland would not have ROA in Hong Kong if both his parents were not Hong Kong permanent residents at the time of his birth.

Adopted children

16. In response to Mr Howard YOUNG, DS for S said that the status of ROA

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claimants who were adopted children was the subject of current court proceedings and thus he was not in a position to comment on the issue. In this connection, Miss Margaret NG said that in the hearings of the case relating to adopted children in the Court of First Instance, both the Government Counsel and the other party had agreed to the view that the legal effect of an adoption in the Mainland should be the same as that of an adoption in Hong Kong. She recalled that the Administration had explained at a previous special meeting of the House Committee that a *de facto* marital relation was comparable to a registered marriage. She asked whether the Mainland authorities would state the date of commencement of *de facto* marital relation on the certificate of a re-registered marriage. DD of Imm responded that to his knowledge, a *de facto* marital relation was not much different from a registered marriage. However, the date of commencement of a *de facto* marital relation would not have any significance in the determination of whether the child concerned had ROA in Hong Kong. If there was sufficient evidence to prove a person's eligibility for ROA in Hong Kong, his eligibility would not be affected regardless of whether his parents' relationship was *de facto* or registered. He added that in the assessment of applications, there was no requirement for examining whether the parents' relationship was *de facto* or registered.

17. Miss Margaret NG said that if a *de facto* marital relation was regarded as equivalent to a registered marriage, re-registered marriage should also receive the same treatment. DS for S responded that to his understanding, if two persons without *de facto* marital relationship gave birth to a child and subsequently get married, their marital relationship would be regarded as comparable to that of a registered marriage.

Designated team for review of applications

18. In response to the Chairman, DD of Imm clarified that the "檢討專責小組" in item (c) of the Annex to the Administration's paper was a designated team in ImmD responsible for reviewing complaints against the Immigration Department.

Statistics on overseas C of E applicants born out of wedlock of Hong Kong permanent residents

19. In response to the Chairman, DD of Imm said that ImmD had been processing about 1 000 overseas applications for C of E from persons born of Hong Kong permanent residents. At the Chairman's request, DD of Imm agreed to provide statistics on the number of overseas C of E applicants born out of wedlock of Hong Kong permanent residents.

Adm

Statistics on ROA claims under BL24(2)(1)

20. In response to the Chairman, DS for S said that the Administration would lodge an appeal in respect of the court's ruling in respect of a person who claimed ROA in Hong Kong under BL24(2)(1). He said that there had not been any substantial increase in the number of Mainland people coming to Hong Kong to give birth to their children in a similar fashion. He assured members that the Administration would monitor the situation closely.

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21. There being no other business, the meeting ended at 4:00 pm.

Legislative Council Secretariat
28 February 2000