

江行政總監：

謝謝你在 2020 年 12 月 14 日的電郵。我們在 2020 年 12 月 14 日的電郵內容的英文版本如下：

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Thank you for your letter of 6 November 2020 to the Chief Executive expressing your concerns over the stipulation that a Hong Kong permanent resident (“HKPR”) who is not of Chinese nationality will lose his/her HKPR status if he/she has been absent from Hong Kong for a continuous period of not less than 36 months since he/she ceased to have ordinarily resided in Hong Kong, and requesting that the 36-month requirement would be handled with discretion in view of the COVID-19 epidemic. I am authorised to reply as follows:

Regarding the matters raised in your letter, the Security Bureau (“SB”) and the Immigration Department (“ImmD”) attended a meeting with representatives of the Heung Yee Kuk New Territories on 7 October 2020 to explain the relevant legal provisions. As we mentioned at the meeting, whether a HKPR not of Chinese nationality will lose his/her HKPR status is subject to two factors, namely:

(A) whether and since when the person concerned ceased to have ordinarily resided in Hong Kong (hereinafter referred to as “factor of cessation of ordinary residence in Hong Kong”); and

(B) whether the person concerned has been absent from Hong Kong for a continuous period of not less than 36 months after ceasing to have ordinarily resided in Hong Kong (hereinafter referred to as “factor of duration”).

A HKPR not of Chinese nationality will lose his/her HKPR status only if his/her individual circumstances meet both the factors (A) and (B) above.

Regarding the factor (B) above (i.e. factor of duration), there is no provision in the Immigration Ordinance empowering the Director of Immigration, at his discretion, to extend or enlarge the 36-month period of absence from Hong Kong mentioned above or empowering him to waive compliance with the legal provision about the 36-month period of absence from Hong Kong on grounds of special or unforeseen circumstances (e.g. under the impact of the COVID-19 epidemic). In short, the ImmD has no discretion in respect of the factor of duration, regardless of whether or not the compliance with the factor of duration is out of personal wishes. On the other hand, regarding the factor (A) above (i.e. factor of cessation of ordinary residence in Hong Kong), section 2(6) of the Immigration Ordinance empowers the Director of Immigration to determine whether the person concerned has ceased to be ordinarily resident in Hong Kong or is only temporarily absent from Hong Kong by taking into consideration all circumstances of each case, including:

- the reason, duration and frequency of any absence from Hong Kong;
- whether he/she has habitual residence in Hong Kong;
- employment by a Hong Kong based company; and
- the whereabouts of the principal members of his/her family (spouse and minor children).

Therefore, in ImmD's handling of the above issue, there is room for discretion in respect of factor (A) (i.e. factor of cessation of ordinary residence in Hong Kong) only, but no discretion for factor (B) (i.e. factor of duration). A HKPR not of Chinese nationality who is absent from Hong Kong due to the COVID-19 epidemic may make a representation about his/her individual circumstances to the ImmD. The ImmD will take into account all circumstances of the case in accordance with the above legal provision to determine whether the person concerned meets the factor of cessation of ordinary residence in Hong Kong. If the ImmD is satisfied that the person concerned has not ceased to be ordinarily resident in Hong Kong (i.e. the factor (A) above is not applicable), the person concerned will not lose his/her HKPR status.

As for HKPRs of Chinese nationality, regardless of whether they are absent from Hong Kong for a long duration or are holders of foreign passports, they will not lose their HKPR status and shall still enjoy the right of abode in Hong Kong as long as they remain Chinese nationals.

Whether the children born abroad to Hong Kong residents residing abroad have Chinese nationality and enjoy the HKPR status will depend on the individual circumstances of each case. First, whether persons born abroad have Chinese nationality shall be determined in accordance with the Nationality Law of the People's Republic of China ("Nationality Law"). As stipulated in Article 5 of the Nationality Law, any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.

According to Article 24(2)(3) of the Basic Law and paragraph 2(c) of Schedule 1 to the Immigration Ordinance, a person of Chinese nationality born outside Hong Kong before or after the establishment of the Hong Kong Special Administrative Region to a HKPR of Chinese nationality shall be a HKPR with the right of abode in Hong Kong if at the time of his/her birth, his/her parent has the right of abode in Hong Kong under paragraph 2(a) or (b) of Schedule 1 to the Immigration Ordinance.

If the person concerned has acquired foreign nationality at birth abroad to parents who are HKPRs of Chinese nationality and have settled abroad at the time of his/her birth, regardless of whether or not the parents have acquired foreign nationality, he/she shall not have Chinese nationality in accordance with Article 5 of the Nationality Law.

Moreover, even if a HKPR who is not of Chinese nationality loses his/her HKPR status, he/she still has the right to land in Hong Kong. That is to say he/she will be able to enter Hong Kong freely to live, study or work without the need for prior application for a visa or an entry permit to Hong Kong. He/she is also not subject to any limit of stay in Hong Kong.

To conclude, whether or not a person still retains his/her HKPR status shall be determined

by the individual circumstances of that person. The ImmD will consider the circumstances of each case in accordance with the relevant legal provisions, including the factors (A) and (B) above. For further enquiries about an individual case, please contact Mr Michael LEE, Chief Immigration Officer of the ImmD, at (852) 2829 3983 for follow-up.

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保安局局長  
(黃永衡 代行)

副本送：  
行政長官私人秘書 (經辦人：林朗儀女士)  
入境事務處處長 (經辦人：陳雅婷女士)