



林思齊東西學術交流研究所  
David C. Lam Institute for East-West Studies (LEWI)

**Working Paper Series** 研究報告系列

Paper Number: 93  
November 2009

**Immigration and Nationality Anomalies of Hong Kong**

K. L. Alex LAU  
Hong Kong Baptist University

K. L. Alex Lau ([alexlau@hkbu.edu.hk](mailto:alexlau@hkbu.edu.hk)), Associate Professor, HKBU; Visiting Scholar, Oxford and Peking University; Honorary Fellow, Asian Institute of Int'l Financial Law, HKU

The author welcome comments from readers.

Contact details:

**E-mail:** alexlau@hkbu.edu.hk

**David C. Lam Institute for East-West Studies (LEWI)**  
**Hong Kong Baptist University (HKBU)**

*LEWI Working Paper Series* is an endeavour of David C. Lam Institute for East-West Studies (LEWI), a consortium with 28 member universities, to foster dialogue among scholars in the field of East-West studies. Globalisation has multiplied and accelerated inter-cultural, inter-ethnic, and inter-religious encounters, intentionally or not. In a world where time and place are increasingly compressed and interaction between East and West grows in density, numbers, and spread, East-West studies has gained a renewed mandate. LEWI's Working Paper Series provides a forum for the speedy and informal exchange of ideas, as scholars and academic institutions attempt to grapple with issues of an inter-cultural and global nature.

*Circulation* of this series is free of charge. Comments should be addressed directly to authors. Abstracts of papers can be downloaded from the LEWI web page at <http://www.hkbu.edu.hk/~lewi/publications.html>.

*Manuscript Submission:* Scholars in East-West studies at member universities who are interested in submitting a paper for publication should send an article manuscript, preferably in a Word file via e-mail, as well as a submission form (available online) to the Series Secretary at the address below. The preferred type is Times New Roman, not less than 11 point. The Editorial Committee will review all submissions. The Institute reserves the right not to publish particular manuscripts submitted. Authors should hear from the Series Secretary about the review results normally within one month after submission.

*Copyright:* Unless otherwise stated, copyright remains with the author. Please do not cite or circulate the paper without the author's consent.

*Editors:* Ah Chung TSOI, Director of LEWI; Emilie Yueh-yu YEH, Cinema & TV and Associate Director of LEWI.

*Editorial Advisory Board:* From HKBU: CHEN Ling, Communication Studies; Martha CHEUNG, English Language and Literature; Vivienne LUK, Management; Eva MAN, Humanities; TING Wai, Government and International Studies; WONG Man Kong, History; Terry YIP, English Language and Literature. From outside HKBU: Paul CROWE, David See-Chai Lam Centre for International Communication, Simon Fraser University (Canada).

*Disclaimer:* David C. Lam Institute for East-West Studies (LEWI), and its officers, representatives, and staff, expressly disclaim any and all responsibility and liability for the opinions expressed, or for any error or omission present, in any of the papers within the Working Paper Series. All opinions, errors, omissions and such are solely the responsibility of the author. Authors must conform to international standards concerning the use of non-published and published materials, citations, and bibliography, and are solely responsible for any such errors.

*Further Information* about the working paper series can be obtained from the **Series Secretary:**

David C. Lam Institute for East-West Studies (LEWI)  
Hong Kong Baptist University  
Kowloon Tong  
Hong Kong  
Tel: (852) 3411-7273; Fax: (852) 3411-5128  
E-mail: [lewi@hkbu.edu.hk](mailto:lewi@hkbu.edu.hk)  
Website: <http://www.hkbu.edu.hk/~lewi/>

## **Immigration and Nationality Anomalies of Hong Kong<sup>1</sup>**

K. L. Alex LAU  
*Hong Kong Baptist University*

### **Abstract**

This paper sets out various unusual features in the immigration and nationality requirements applicable to Hong Kong (HK) while it was a British colony. The same issues after the change of sovereignty to the People's Republic of China (PRC) in 1997 will also be discussed. It will be shown that many of these issues are quite different from those of other common law countries such as Canada or Australia . Many are driven by policy considerations rather than legal reasoning.

### **1.0 Introduction**

This paper sets out various unusual features in the immigration and nationality requirements applicable to Hong Kong (HK) while it was a British colony from 1842 to 1997. The same issues after the change of sovereignty to the People's Republic of China (PRC) in 1997 will also be discussed. It will be shown that many of these issues are quite different from those of other common law countries such as Canada or Australia<sup>2</sup>.

### **2.0 The HK Legal System**

HK became a British colony in 1843. From then on the common law applied to HK. The territory had 400 square miles, separated from the Mainland by the Shenzhen River. When the territory was handed over to the PRC in 1997, the legal system remained unchanged. The new constitution applicable to HK was called the Basic Law, which provides that the common law will continue to apply to HK until 30 June 2047<sup>3</sup>. There has been no discussion to date as to what changes to the HK legal system may take place after that date. It is submitted that with the examples of the USA and Canada, each

---

<sup>1</sup> K L Alex Lau, PhD, Associate Professor of Law, Hong Kong Baptist University (alexlau@hkbu.edu.hk)

<sup>2</sup> See (with Daniel H K Ho and Antony Ting) 'An Overview of the Australian Skilled-Independent Migration for Managers: Immigration and Tax Perspectives' *Journal of Immigration Asylum and Nationality Law*, (2008) Vol. 22 No. 1, pp. 63-78

<sup>3</sup> Article 8

having common and civil law jurisdictions, the common law can continue to operate in HK indefinitely. In the USA, there are 51 jurisdictions. 50 of them practise the common law. The state of Louisiana practises civil law, adopted from the legal system in France. In Canada, the same applies to the Province of Quebec, while all the other provinces practise the common law.

### **3.0 Nationalities of HK Residents before 1997**

#### **3.1 Communist vs Kuomintang**

Nationality has always been a taboo subject in colonial HK. The notion that one looked Chinese but did not have a Chinese passport stirred up bitter-sweet sentiment amongst HK residents. Many struggled with the dichotomy of being ethnic Chinese but not wanting to be identified with the then PRC. Any Mainland connection would inevitably be suspected to have association with the Chinese Communist Party (CCP). In order to avoid social unrest, schools went to great lengths to suppress the discussion of communism. During the Cultural Revolution, from 1966 to 1976, a student caught reciting or reading Mao Zedong's speeches<sup>4</sup> in some HK schools, would be severely punished. The writer always wondered why the school adopted a double standard. Whereas the works of Mao Zedong were banned, those of Chang Kai Shek were not. Mao Zedong was considered a revolutionary by the KMT, but so was Chang Kai Shek in the eyes of the CCP. Is it not a major objective of studying history to look at events from both sides? How can students develop critical minds if they only hear one side of the story?

#### **3.2 No National anthem**

The national anthem of colonial HK was 'God Save the Queen'. Yet in the writer's entire length of residence in HK up till 1997, this anthem was never taught in the primary and secondary schools attended by him. This was despite the fact that these were both Anglican schools whose medium of instruction was English. On the other hand, the PRC national anthem was also not available because of the fear of CCP association by playing it. The anthem for the Republic of China (Taiwan) was not popular in HK. As a result,

---

<sup>4</sup> many of these writings are contained in the "Little Red Book" (Mao Yu Lu)

colonial HK residents were an unusual group of people who never had the chance to learn their national anthem. In the writer's case, he only learnt to sing the British national anthem after his son learnt it while attending high school in Britain, ten years after the handover. Ironically, the writer learnt the Chinese national anthem (March of the Volunteer Army) during the aftermath of the Tiananmen Incident in June 1989, when there was widespread anti-Beijing sentiment in HK.

### 3.3 Michael Chang

An incident in HK served as a reminder of how difficult local residents came to terms with their nationalities. The former American-Chinese tennis star Michael Chang had been a long time favourite of local fans. During one visit to HK, an interviewer commented to Chang, "You have achieved so much as a Chinese." Chang replied, "I am American." Of course, Chang was referring to his legal nationality instead of his ethnic background. But many angry fans denounced Chang as not recognising his roots. In fact, before 1997, no HK resident would qualify for PRC nationality.

It was unfortunate that the Chinese language has not been used effectively to distinguish between 'legally Chinese', 'Chinese citizen' and 'ethnic Chinese'. These terms were not commonly used in HK. 'Legally Chinese' (fa ding zhong guo ren) was almost never used as a term in daily conversations. 'Chinese citizen' (zhong guo gong min) is not used because there was no such person in colonial HK. 'Ethnic Chinese' (hua ren) is usually used in overseas Chinese communities. It is not used commonly in HK because almost everyone there was ethnic Chinese. As a result, the only term used frequently was simply "Chinese" (zhong guo ren), without any qualification as to its legality or ethnicity. This is augmented by the fact that colonial HK was seriously deprived of legal education. The first law school was established as late as 1968. To this day, there are still some Chinese people who frown at the thought that Singaporeans do not consider themselves Chinese.

### 3.4 British National (Overseas)

The nationalities of HK residents were also unusual. Just before the handover in 1997, the HK population was about six million. The great majority of them were ethnic Chinese who originated from Mainland China. Amongst them the great majority originated from the Guangdong province. This paper will not discuss the nationality issue of expatriates but only those of the ethnic Chinese residents. Their nationalities could be broken down into two main categories. Just under three million HK residents were British National (Overseas) (BNO). These residents were formerly Citizens of the United Kingdom and Colonies (CUKC). The British Nationality Act (BNA) 1981 converted them into British Dependent Territories Citizens (BDTC). In 1987, in preparation for the handover, BDTCs were converted into BNOs. These BNOs were British subjects. The Queen was their sovereign. Yet, they did not have right of abode in the UK. They did not enjoy UK health, education, unemployment and retirement benefits. The BNO passport did permit its holder to visit more than fifty countries without the need to secure a visa in advance.

At the time of the handover, the BN(O) enjoyed visa free access to more countries than holders of the HKSAR passport. For a while, the BN(O) was preferred to the HKSAR passport. As time passed, more countries recognised the HKSAR passport which eventually surpassed the BN(O) in gaining entry into countries without the need to first secure visas. The BN(O) has lost its appeal. Many HK residents simply do not renew it when it expires, preferring to use the HKSAR passport for travelling instead.

### 3.5 The UK Right of Abode Scheme

Out of the BN(O)s grew a small but significant group of full British Citizens (BC) under the UK Right of Abode Scheme of 1990. After the Tiananmen Incident in June 1989, the United Kingdom (UK) Government introduced this Scheme to select 50,000 elite HK residents and gave their immediate family members the BC status. There was no need to reside in the UK at all. The idea was to give these people an ‘insurance’ of being able to leave HK should things went wrong. Otherwise they could remain in HK to serve the community. The BC statuses held by these successful applicants were no different from those held by people born in the UK. Yet limiting the quota under the Right of

Scheme to 50,000 was considered too low. Including the immediate families, the Scheme only awarded about 250,000 BCs, not even ten per cent of the then BN(O)s. When questioned as to why the number could not increase, the UK Government replied that they could not afford the risk of seeing two million HK residents relocating to the UK all at once. It is submitted that this concern was uncalled for. The UK has never been a popular migration destination amongst UK residents. The writer has been practising immigration law in HK for 20 years. It is submitted that the chance of seeing hundreds of thousands of HK residents relocating to the UK is significantly lower than relocating to other English-speaking countries, such as Canada and Australia.

In addition, in the 1990s the UK has taken on a much higher risk by installing nuclear missiles in the country. The risk of these missiles leaking radiation, being sabotaged or attacked would post a risk significantly higher than two million HK Chinese migrating to the UK. Nevertheless, most BN(O) Hong Kongers were kept out of the UK

### 3.6 The Non-British Hong Kongers

That leaves the other three million HK residents without British nationality. They migrated to HK from the Mainland. By 1997, they had two alternative statuses. When they first arrived in HK, they had already given up their Chinese Household Registration statuses. Therefore, legally they were still PRC citizens but without the said Registration they did not qualify for PRC passports. So the only legal status they could declare was 'stateless'. They did not qualify as BN(O)s because they had not fulfilled the BNA requirements. At this point the HK Government would issue them with travelling documents called Document of Identity (DI). After residing in HK for seven further years, they would become Permanent Residents (PR) of HK. They were still stateless but their PR status would entitle them to new travelling documents called the Certificate of Identity (CI). Therefore, colonial HK had another unusual feature in that over half of its population were technically Chinese but all did not hold PRC passports.

Such were the nationalities of HK residents before the handover. Out of the six million residents, there were about 2.8 million BN(O)s. Technically this was a type of British nationality but they enjoyed very little privileges conferred by the UK government. The other 3.2 million were holders of DIs and CIs. Both were technically stateless

although ethnically they were all Chinese. The CI holders could obtain the BN(O) if they resided in HK for one more year after securing the CI. A very small elite qualified as BCs under the Right of Abode Scheme. Last but not least, none of them qualified as PRC citizens.

We now turn to the immigration visa requirements in HK. It will be seen that the immigration requirements are even more unusual than the nationality issues just discussed. Many immigration requirements are unreasonable, illogical and even unfair.

#### **4.0 Sources of Immigration Visa Requirements**

##### **4.1 Confidential Internal Guidelines**

One would expect to find the requirements for these visas to be located within the HK legal system. Such is not the case. Instead, they are located within internal guidelines of the Immigration Department (HKID) of the HK Government. These guidelines are confidential and not open to the general public. The website of HKID contains useful information for potential applicants, but such narratives are not exhaustive<sup>5</sup>. In the absence of a complete set of reliable information, an immigration lawyer would have to build up his expertise by trial and error<sup>6</sup>. It is submitted that the adoption of confidential guidelines to contain immigrant visas requirements is a major anomaly.

Requirements of various HK immigrant visas are not located in local statutes and case law. The main statute governing immigration issues, the Immigration Ordinance<sup>7</sup>, does not contain any sections on how to secure a resident visa. Its provisions deal with general immigration matters, such as detention, arrest and prosecution of illegal immigrants.

---

<sup>5</sup> For example, in the above web link on Employment Visas, it does not say that the applicant must not own any shares in his employing company. If this happens, his case would be treated as an Investment Visa application, with completely different requirements. The writer only found out this practice through personal experience in handling Investment Visa applications.

<sup>6</sup> See 'An Overview of Hong Kong Immigration Requirements' (2005) Vol. 19 No. 4 *Journal of Immigration Asylum and Nationality Law* pp. 240-246

<sup>7</sup> Chapter 115, Laws of Hong Kong, for complete text, see [www.legislation.gov.hk](http://www.legislation.gov.hk)



Immigration cases are likewise unhelpful. For example, between 1982 and 2008, there was not one single court case whereby an unsuccessful Employment Visa applicant took the HK Government to court.<sup>8</sup> Various practical reasons may contribute to this outcome. They include the long waiting time before trial, expensive legal fees, the relatively low income ceiling required to secure legal aid<sup>9</sup> and the prohibition of contingency fees in contentious cases<sup>10</sup>.

#### 4.2 The Writer's Source of Information

The reader may then wonder, if the sources of immigration requirements are found within confidential internal guidelines of HKID, how can the writer, not being an HKID officer, know so much about such requirements and be able to practise this area for 20 years? There were two reasons for this. In 1989, the writer joined the HK office of a leading international law firm. It had an immigration practice group which provided training for aspiring solicitors interested in specialising in that area. Soon afterwards, the writer was introduced to an enterprising young HKID officer. They became good friends. When this paper was being written, this friend has already become one of the most senior HKID officers. In the last 20 years, the writer was able to increase his knowledge, not only on HK immigration visa requirements, but also on the policy considerations behind such requirements. Finally, the writer should point out that the so called confidential internal guidelines, in which the HK immigration visa requirements are contained, are not really confidential in the sense that leakage of such requirements would lead to fines, prosecution or other sanctions. Rather, they are not published in materials available to the general public. That was the reason why the writer needed to build up his expertise through handling actual cases. The reader can rest assured that reading this paper would not lead to any allegations of having accessed sensitive or restricted HK government information.

---

<sup>8</sup> There were 53 cases during these 27 years in which the court considered the issue of Employment Visas. See [www.hklii.org](http://www.hklii.org). These cases are listed in the Appendix section of this paper.

<sup>9</sup> As of 1 August 2009, in order to qualify for legal aid, the applicant must possess disposable income below HK\$175,800, see s.5, Legal Aid Ordinance, Cap. 91, Laws of HK.

<sup>10</sup> Section 64, Legal Practitioners Ordinance, Chapter 159, Laws of HK, for complete text see [www.legislation.gov.hk](http://www.legislation.gov.hk)

## 5.0 Types of Immigration Visas

The most common types of immigrant visas in HK, for professionals and business executives, are the Employment, Employment (Investment)<sup>11</sup>, Capital Investment, Dependent and the Quality Migrant Entrant Scheme (QMES) Visas. Below is an account of various anomalies located within each of these types of immigration visas.

### 5.1 The Employment Visa

The Employment<sup>12</sup> Visa is suitable for someone seeking to work in HK as an employee. The Visa is granted to a person who is otherwise not readily available amongst the work force in HK. An obvious example of an ideal candidate would be one who possesses technical knowledge and vocational experience. In addition, one would also consider the fluency in English and Mandarin as another rare quality amongst the HK work force. It is well known that the standard of English has fallen amongst local graduates. At the same time, Mandarin is not fluently spoken amongst most people in HK. Yet, HKID has repeatedly advised the writer that fluency in either of these languages is not considered a quality not readily available in HK. With respect, as an educator himself, the writer does not share HKID's view. Residents of Singapore may be fluent in both English and Chinese. But having lived in HK for more than 40 years, the same cannot be said of HK residents. HKID must face reality head on.

### 5.2 The Employment (Investment) Visa

The Investment Visa is catered for an entrepreneur wishing to start a new business or joining an existing local business. This is the type of visa which has confused many immigration visa applicants over the years. Since HK is a common law jurisdiction, it costs as little as HK\$1 to incorporate and own a limited company in HK.<sup>13</sup> In this sense, a HK company is 30,000 times cheaper to incorporate than the same type of limited company under PRC law.<sup>14</sup> The relatively inexpensive way to incorporate a HK limited

---

<sup>11</sup> See [www.immd.gov.hk/ehtml/id\(e\)1000.htm](http://www.immd.gov.hk/ehtml/id(e)1000.htm) for the prescribed requirements

<sup>12</sup> See [www.immd.gov.hk/ehtml/fprofes.htm](http://www.immd.gov.hk/ehtml/fprofes.htm) for the prescribed requirements

<sup>13</sup> There are registration fees charged by the HK Companies Registry but as far as the issued capital is concerned, the minimum required is HK\$1.

<sup>14</sup> See Lau, A K L, "The Chinese Limited Liability Company under the Chinese Company Law" {2006} *HKLJ* 633 for a comparison between HK and PRC private companies.

company leads many overseas applicants to incorporate this type of company. Then the applicant would use this new company to employ himself to come to work in HK as a company employee. He would then apply for a HK Employment Visa. Even if he is well qualified for this post, there is another problem.

In our example, the applicant is both an employee and shareholder of his own company. There is no relevant information on HKID's website but it is a practice of HKID to treat such an applicant as an Employment (Investment) Visa applicant, rather than as an Employment Visa applicant. An Employment (Investment) Visa carried completely different requirements. HKID is no longer looking primarily for a person not readily available from the HK work force. Rather, HKID is looking for significant economic benefits the application can bring to HK. These include creating employment opportunities for local people and training the local work force into skilled labour. Without such knowledge of HKID's practice, the application is bound to fail. The writer questions why HKID does not clarify this confusion on their website. This leads to a considerable wastage of manpower both with respect to the applicant and HKID.

### 5.3 The Capital Investment Visa

The Capital Investment Visa came into existence in 2003<sup>15</sup>. It is given to a person intending to invest at least HK\$6.5 million in HK. One requirement is the applicant must prove that he has owned the HK\$6.5 for at least two years. However, he need not prove how he got it. Therefore, a person can give the money to another friend, who will then qualify for this visa after two years. It is submitted that with an ever increasing alert around the world against money laundering, it is surprising that HKID takes such a relaxed view.

Another interesting anomaly concerns the fact that a successful applicant under the Capital Investment Visa is permitted to work in HK, as if he was granted an Employment Visa. There is no need to seek HKID's approval in advance. The person can take up any employment, so long as the job nature is legal. With respect, the writer cannot see the logic. HK welcomes overseas investors who bring in substantial income. Yet permitting that person to work is a different matter. A person may be a sound investor. He may also

---

<sup>15</sup> See [www.immd.gov.hk/ehhtml/cies.htm](http://www.immd.gov.hk/ehhtml/cies.htm) for the prescribed requirements

have been given the substantial capital as a gift. Either way, he is not necessarily a competent employee. The whole idea behind the Employment Visa scheme is to locate an overseas person most suitable for an appointment in HK. Allowing a Capital Investment Visa holder to work bypasses this checkpoint. It is submitted that this gap should be filled as soon as possible. Otherwise, HK may start to have employees who are not the best qualified persons, just because they are wealthy.

#### 5.4 The Quality Migrant Entrant Scheme

The QMES Visa operates two systems. The first is a points system under which applicants are scored according to their academic and professional attributes. They include age, proficiency in English or Chinese, academic qualifications and vocational experience. The second is a system based solely on the applicant's past achievements. Very high achievers would qualify under this route. They include film stars and Olympic medalists.

The points system has attracted some criticism too because there are anomalous requirements. Up till 2008, applicants were required to be proficient in both English and Chinese. After much controversy, HKID agreed to change the requirement to be proficiency in one of the two languages. It is submitted that HKID was shortsighted in requiring applicants to be bilingual. It was discussed above under the Employment Visa, that HKID considers the HK work force to be adequately supplied with people fluent in English and Mandarin. As such, why need bilingual QMES applicants?

Another strange requirement is the holding of doctorate degrees. A person with a PhD degree or equivalent scores 45 points. The total pass mark is 165. If an applicant holds two doctorates, he scores 50. Again with respect, HKID does not appreciate at all the difficulty and the time taken to get even one doctorate degree. Two doctorate degrees can easily take up anywhere between eight to twelve years. Yet two doctorates only score ten percent more points than one doctorate degree. This is unreasonable. HKID needs a lesson on higher degrees.

## 5.5 The Dependent Visa

All these successful applicants can apply for Dependent Visas<sup>16</sup> for their spouses, parents and unmarried minor children. It seems there is not much anomaly on this visa. In fact, the dependent may carry the most significant anomaly amongst all HK immigration visas. It will be recalled that an Employment Visa applicant is subject to a vigorous standard set by HKID. He needs to demonstrate that he possesses qualifications and experience not otherwise readily available in HK. If he obtains the Employment Visa, his wife can also come to HK on a Dependent Visa. Here is the anomaly. The wife is permitted to also take up employment in HK, but without HKID's prior approval.

In addition, there is a second anomaly. When the husband changes jobs, he needs to apply for HKID approval as if he is applying for an Employment Visa for the first time. The wife needs no approval. She can change into any jobs so far as it is legal. The rationale behind this anomaly was confirmed in *Farooq v Director of Immigration*.<sup>17</sup> The court explained that a dependent does not come to HK primarily looking for a job. Therefore so long as HKID is convinced that the dependent does not primarily intend to seek employment in HK, she would qualify for the Dependent Visa. If she then decides to enter employment after coming to HK, HKID's approval is not required because she should have been adequately provided for by his/her spouse holding an Employment Visa. The court also said that such a move would be difficult to police. With respect, HKID should impose a separate approval process if the wife wants to work in HK. Otherwise the Employment Visa scheme may be defeated.

There was a brief period of time, between 2003 and 2007, when a dependent was indeed required to secure HKID's separate approval before working in HK. That requirement was abolished in 2007, partly due to strong objection from expatriates. The anomalies on Dependent Visas continue to exist today.

---

<sup>16</sup> See [www.immd.gov.hk/ehhtml/fdepend.htm](http://www.immd.gov.hk/ehhtml/fdepend.htm) for the prescribed requirements

<sup>17</sup> HCA 208 / 2002

## 6.0 Becoming a Permanent Resident

Another unusual phenomenon was it took seven years of continuous residence to become a HKPR. This was much longer than other popular migration destinations. A Canadian or Australian<sup>18</sup> migrant visa holder would become a PR once he arrives in either of these countries. Not only is he not required to have first lived there for seven years, he is not even required to reside there for a full single day. The PR status removes the requirement to seek HKID approval before changing jobs. This makes the PR status almost as sought after as citizenship. But if it takes so long before becoming a HKPR, it would make HK very unattractive in retaining overseas talents.

## 7.0 Additional Requirements Imposed on PRC Residents

Since there were a huge number of well qualified potential immigrants from the PRC, HKID had always imposed additional requirements applicable only to them. For example, a PRC applicant under the Investment or Capital Investment Visa<sup>19</sup> Category must also possess the PR status from another country. This was a policy consideration not applicable to anyone else, not even those from Taiwan. So the ironic result is that the most difficult group of applicants to migrate to HK, which is part of the PRC, are PRC applicants.

## 8.0 The Situation after 1997

The last segment discusses whether any of the anomalies mentioned about have been changed after the handover. For immigration visas, the old rules are still in place. Some new categories of visas were introduced. The special additional requirements for PRC residents remain the same. For nationalities, residents born in HK post 1997 are no longer BN(O)s. Instead, they are given a new nationality: citizen of the HK Special Administrative Region (HKSAR). HK is now part of the PRC. So HK residents now have

---

<sup>18</sup> (with Daniel H K Ho and Antony Ting) 'An Overview of the Australian Skilled-Independent Migration for Managers: Immigration and Tax Perspectives' *Journal of Immigration Asylum and Nationality Law*, (2008) Vol. 22 No. 1, pp. 63-78

<sup>19</sup> See (with Daniel H K Ho) 'Capital Investment Visa in Hong Kong: Immigration Considerations and Tax Issues' (2006) Vol. 20 No. 4 *Journal of Immigration Asylum and Nationality Law* pp. 270-282

two passports. Originally the PRC Nationality Law does not recognise dual nationality<sup>20</sup>, but because of an Explanation issued by the National People's Congress Standing Committee in Beijing, HK residents of ethnic Chinese origin are given special permission to have more than one citizenship. Unfortunately, the Explanation did not generate the long lasting effect intended. Recently some senior HK government officials had dual nationalities. Under the Explanation this was permitted. Yet in the end most of these officials renounced their foreign passports due to public pressure.<sup>21</sup>

The DI is still in use but the CIs are gone. Those who qualified for CIs are now automatically HKSAR citizens. However, for expatriates wishing to naturalise as Chinese, the process is not always successful. Since the handover HKID has only conferred several hundred new HKSAR citizenships to non-ethnic Chinese. It seems that most expatriates cannot achieve a higher status beyond the HKPR.

## 9.0 Conclusion

Colonial HK was endowed with many unusual features in the realms of immigration. Many of these issues defy logic, and are not found in other common law jurisdictions. These include policy driven immigration requirements, long PR qualifying period, and harsh additional requirements imposed on PRC applicants.

HK has always pride itself as a leading financial centre in the world. But with increasing competition from fast developing neighbours such as the PRC, Singapore and Macau, HK may one day lose its appeal to overseas executives and professionals if the immigration system continues to be rigid and unreasonable.

---

<sup>20</sup> For a discussion on dual nationality, see Kostakopoulou D., *The Future Governance of Citizenship*, Cambridge University Press 2008 p. 91

<sup>21</sup> See "The Dual Nationality Issue of Undersecretaries and Political assistants at the Hong Kong Government: Too Much Done or Not Enough Done?" *Journal of Immigration, Asylum and Nationality Law*, Vol. 22 Issue No. 4, forthcoming in Spring 2009

**Appendix: HK Court Cases since 1982 which Considered the Employment Visa**

1. G v. G - [1996] HKFamC 1; FCMC008726/1995
2. YUE WAH CHUK RICHARD AND ANOTHER v. MCKEON BRENDAN HUGH - [2004] HKDC 181; DCCJ007088/2003
3. MAURA JULIET A. RAQUIZA v. THE DIRECTOR OF IMMIGRATION - [2006] HKCFI 795; HCAL000020/2006
4. DIGENDRA BAHADUR SINJALI v. DIRECTOR OF IMMIGRATION AND ANOTHER - [2005] HKCFI 211; HCAL000062/2004
5. FERNANDO M RAMOS JR v. LA TRATTORIA RESTAURANT & BAR O/B LA TRATTORIA LTD. - [2000] HKCFI 1276; HCA006152/1998
6. LL.B. CONSULTANCY LTD v. PROWAY LTD AND OTHERS - [2002] HKCFI 1229; HCA005130/2001
7. LOZANO JOANNE GUILLERMO v. DIRECTOR OF IMMIGRATION - [2006] HKCFI 640; HCAL000105/2005
8. R. v. CHING WAI FAN, CARINA - [1995] HKCA 13; CAAR000010/1994
9. PREM SINGH v. DIRECTOR OF IMMIGRATION - [2003] HKCFA 32; [2003] 1 HKLRD 550; [2003] 137 HKCU 1; [2003] HKEC 177; FACV000007/2002
10. HKSAR v. WONG SHE WA - [1999] HKCA 283; CACC000058/1998
11. TATIANA CHINKO v. DIRECTOR OF IMMIGRATION - [2005] HKCFI 1256; HCAL000045/2005
12. GURUNG BIL BAHADUR v. DIRECTOR OF IMMIGRATION - [1999] HKCFI 308; HCAL000034A/1999
13. THAPA INDRA BAHADUR v. THE SECRETARY FOR SECURITY - [1999] HKCFI 507; HCAL000018/1999
14. MUHAMMAD FAROOQ v. DIRECTOR OF IMMIGRATION - [2003] HKCFI 151; HCAL000208/2002
15. HKSAR v. TIONGSON PATRICIA MANALAD - [2001] HKCA 90; CACC000268/2001
16. WONG KAM SEUNG, CATHERINE v. R. - [1994] HKCA 166; CACC000372/1994
17. MAURA JULIET A. RAQUIZA v. THE DIRECTOR OF IMMIGRATION - [2007] HKCA 343; CACV000272/2006
18. R. v. DOLLY A. QUIAMAS - [1995] HKCA 309; CACC000445/1995
19. R. v. RAMOS MINVILUZ ALEGADO - [1996] HKCA 166; CACC000224/1996
20. ELVIRA VERGARA, EDITA TOLIBAS GWENN ARCILLA AND NICANORA MAGLINES v. THE ATTORNEY GENERAL - [1987] HKCFI 196; HCMP001409/1987
21. LAU OI MING v. DIRECTOR OF IMMIGRATION - [1999] HKCFI 508; HCAL000088/1999
22. HRT v. ST nee SB - [2008] HKFamC 35; FCMC012404/2007
23. : ELVIRA VERGARA, EDITA TOLIBAS GWENN ARCILLA and NICANORA MAGLINES and THE ATTORNEY GENERAL - [1987] HKCA 21; CACV0000120/1987
24. JULITA F. RAZA AND OTHERS v. CHIEF EXECUTIVE IN COUNCIL AND OTHERS - [2005] HKCFI 2; HCAL000030/2003
25. SHAWNAVASUDEEN MUSAHUDEEN v. DIRECTOR OF IMMIGRATION



- AND ANOTHER - [2004] HKCFI 994; HCAL001727A/2000
26. GURUNG BHAKTA BAHADUR v. DIRECTOR OF IMMIGRATION AND ANOTHER - [2002] HKCFI 534; HCAL001579A/2000
  27. BHUPENDRA PUN AND ANOTHER v. THE DIRECTOR OF IMMIGRATION AND ANOTHER - [2002] HKCFI 1167; HCAL001541/2001
  28. HKSAR v. LI LI MUA - [2000] HKCFI 430; HCMA000290/2000
  29. CHRISTIAN BULAO PALMIS v. DIRECTOR OF IMMIGRATION - [2003] HKCFI 209; HCAL002104/2001
  30. SETYONINGSIH SULIS v. CHENG YIN CHING - [1993] HKCFI 251; HCLA000035/1993
  31. GEOFFREY HUGH ALPHONSO AND ANOTHER v. THE DIRECTOR OF IMMIGRATION - [2000] HKCFI 642; HCAL000126A/1999
  32. ANDREW WYLES WATERS v. MALAHON CREDIT CO LTD - [2003] HKCFI 342; HCSD000024/2001
  33. CHESTERTON PETTY LTD. v. FRED GROENEVELD - [2000] HKCA 503; CACV000069/2000
  34. COMMISSIONER OF REGISTRATION v. REGISTRATION OF PERSONS TRIBUNAL AND ANOTHER - [2000] HKCA 401; CACV000272/1999
  35. THAPA INDRA BAHADUR v. THE SECRETARY FOR SECURITY - [2000] HKCA 466; CACV000375/1999
  36. MARIA ISABEL D. TERRADO v. DIRECTOR OF IMMIGRATION - [2006] HKCA 320; CACV000092/2006
  37. RAVI KUMAR v. JAIN UMESH CHAND also known as UMESH JAIN - [1986] HKCFI 157; HCA006193/1984
  38. HARVEY KENNETH v. WELLTEX INTERNATIONAL DEVELOPMENTAL LTD. AND ANOTHER - [2001] HKCFI 567; HCPI000818/1998
  39. TSUI SHU FONG v. CHAN YUEN TENG & OTHERS - [2001] HKCFI 428; HCA018260/1998
  40. JULITA F. RAZA AND OTHERS v. CHIEF EXECUTIVE IN COUNCIL AND OTHERS - [2006] HKCA 296; CACV000218/2005
  41. HKSAR v. LI LI MUA - [2001] HKCFA 64; [2001] 4 HKCFAR 123; [2001] 1 HKLRD 441; [2001] 2 HKC 381; [2001] 2 HKC 381; FACC000007/2000
  42. PREM KUMAR SARAF v. NAHATA JAICHANDAL t/a SANGAM ENTERPRISE - [1986] HKCFI 269; HCA008509/1982
  43. ERNST EDUARD SPRECHER v. ZINGRICH CABLETRANS GMBH AND ANOTHER - [2008] HKDC 65; DCEC001498/2006
  44. R v. LOH WAH THEAM - [1997] HKCA 118; CACC000223/1996
  45. SACDALAN CONRAD CHRIS ALVAREZ v. DIRECTOR OF IMMIGRATION - [2004] HKCFI 395; HCAL000091/2003
  46. ROBERT LEE FLICKINGER . IMMIGRATION DEPARTMENT - [1987] HKCA 258; CACV000052/1987
  47. LI JIN FEI AND OTHERS v. DIRECTOR OF IMMIGRATION - [1993] HKCA 234; CACV000163/1992
  48. NASEER AHMED v. THE DIRECTOR OF IMMIGRATION AND ANOTHER - [2008] HKCFI 1080; HCAL000076/2008
  49. TATIANA CHINKO v. DIRECTOR OF IMMIGRATION - [2007] HKCFI 134;

- HCMP001634A/2006
50. HKSAR v. GUILLERMO, MILAGROS COSTALES - [2006] HKCFI 563;  
HCMA001166/2005
  51. YAN CHEN CHANG MEI AND OTHERS v. DIRECTOR OF IMMIGRATION -  
[1993] HKCA 236; CACV000164/1992
  52. PAN ZE YAN ABLE AND ANOTHERS v. DIRECTOR OF IMMIGRATION -  
[1993] HKCA 242; CACV000173/1992
  53. BRUCE GORDON HUT v. SPECIAL ASSETS LTD - [2006] HKCFI 1080;  
HCA002668/2002