

## LCQ16: Non-Chinese Hong Kong permanent residents

Following is a question by Dr the Hon Priscilla Leung and a written reply by the Secretary for Security, Mr Tang Ping-keung, in the Legislative Council today (September 1):

Question:

Under paragraph 7 of Schedule 1 to the Immigration Ordinance (Cap. 115), a Hong Kong permanent resident (HKPR) who is not of Chinese nationality (non-Chinese HKPRs) will lose his/her HKPR status if he/she has been absent from Hong Kong for a continuous period of 36 months or above since he/she ceased to have ordinarily resided in Hong Kong. It is learnt that quite a number of non-Chinese HKPRs who are staying outside Hong Kong have been unable to return to Hong Kong due to the Coronavirus Disease 2019 epidemic. They are worried that they will lose their HKPR status by virtue of the aforesaid provision due to absence from Hong Kong for a continuous period of 36 months or above. In this connection, will the Government inform this Council:

- (1) of the number of non-Chinese HKPRs, in each of the past two years and since January this year, who had lost their HKPR status as decided by the Director of Immigration (the Director) on the basis of the aforesaid provision;
- (2) of the up-to-date number of appeals against the Director's decisions received by the authorities from those persons mentioned in (1) and, among them, the respective numbers of those which were allowed and rejected; and
- (3) in respect of those non-Chinese HKPRs who have been absent from Hong Kong for a continuous period of 36 months or above solely due to the epidemic, whether the Director will exercise discretion to decide that they still have the HKPR status; if so, of the details; if not, the reasons for that?

Reply:

President,

Pursuant to paragraph 7(a) of Schedule 1 to the Immigration Ordinance (Cap. 115), a Hong Kong permanent resident (HKPR) who is not of Chinese nationality (non-Chinese HKPR) will lose his/her HKPR status and right of abode in Hong Kong 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. In other words, whether a non-Chinese HKPR 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 non-Chinese HKPR will lose his/her HKPR status only if his/her specific individual circumstances meet both factors (A) and (B) above. In the event that a non-Chinese HKPR loses his/her HKPR status, he/she still has the right to land in Hong Kong, whereby he/she can enter Hong Kong any time 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. Moreover, if the person has ordinarily resided in Hong Kong for a continuous period of not less than seven years and meets other relevant requirements under the Immigration Ordinance, he/she can apply to the Immigration Department (ImmD) for HKPR status.

For HKPR of Chinese nationality, as long as the person remains a Chinese citizen, he/she will not lose his/her HKPR status no matter whether he/she has been absent from Hong Kong for a long period of time, and will continue to enjoy the right of abode in Hong Kong.

My reply to the questions raised by Dr the Hon Priscilla Leung is as follows:

(1) The ImmD does not specifically maintain breakdown statistics on the cases of losing HKPR status pursuant to paragraph 7(a) of Schedule 1 to the Immigration Ordinance as referred to in the question.

(2) A person who has been determined by the ImmD as having lost his/her HKPR status and is aggrieved may, upon the ImmD's decision not to issue a Hong Kong permanent identity card to him/her, or a decision to declare the Hong Kong permanent identity card issued to him/her to be invalid, lodge an appeal to the Registration of Persons Tribunal (the Tribunal) under section 3D of the Registration of Persons Ordinance (Cap. 177).

In respect of the number of appeal cases requested in the question, the ImmD has taken stock of the appeal cases received from 2019 up to the end of July 2021, and the relevant figures are as follows:

Year	2019	2020	2021 (as at the end of July)
Number of cases (Note 1)	4	3	0
Appeals allowed	0	0	0

Appeals rejected	2	0	0
Cases withdrawn	0	0	0
Appeals being processed	2	3	0

Note 1: The figures are based on the dates of lodging the appeals as notified to the ImmD by the Tribunal. The breakdown in the table is the relevant number of cases received in that year.

(3) Regarding factor (B) above (i.e. the factor of duration), there is no provision in the Immigration Ordinance that empowers the Director of Immigration, at his discretion, to extend the 36-month period of absence from Hong Kong mentioned above, or allows 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. In short, the ImmD has no discretion in respect of factor (B) (i.e. the factor of duration), regardless of whether compliance with the factor of duration is out of personal wishes or not.

On the other hand, regarding factor (A) above (i.e. the 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 the 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).

Accordingly, in handling the above issue, there is room for the ImmD to exercise discretion in respect of factor (A). Among others, the reason for absence from Hong Kong will be taken into account when considering factor (A). As such, a non-Chinese HKPR absent from Hong Kong due to the COVID-19 epidemic may make a representation about his/her specific individual circumstances to the ImmD. The ImmD will, according to the above provisions, take into account all the circumstances of the case and determine whether the person 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. factor (A) above is not applicable), the person will not lose his/her HKPR status.

Overall speaking, whether a person enjoys or still retains his/her HKPR status is to be determined by the specific individual circumstances of that person. The ImmD will consider the circumstances of each case in accordance with the relevant legal provisions, including both factors (A) and (B) above.