

LCQ3: Applications for naturalisation as Chinese national

Following is a question by the Hon Andrew Wan and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (October 23):

Question:

Quite a number of members of the ethnic minorities (EM) wish to apply for the Hong Kong Special Administrative Region Passport to facilitate their travelling and studying abroad. As only Chinese citizens may apply for the passport, they have to apply for naturalisation as a Chinese national. Despite having resided in Hong Kong for years (quite a number of them and their older generations were born and raised in Hong Kong), they have encountered quite a number of difficulties when applying for naturalisation, including that they need to wait for a long time and pay high fees, as well as that they are not informed of the reasons when their applications are rejected and no appeal channel is available. As a result, such EM members, who regard Hong Kong as their home, have lost their sense of belonging to Hong Kong, and some of them even chose to emigrate to other countries. Regarding the applications for naturalisation by EM members, will the Government inform this Council:

- (1) of the respective numbers of naturalisation applications received, approved and rejected by the Immigration Department (ImmD), as well as the number of applications withdrawn, in each of the past 10 years, together with a tabulated breakdown by ethnicity;
- (2) given that ImmD will, in processing naturalisation applications, consider 10 factors such as whether the applicant has the right of abode in Hong Kong and whether the applicant has sufficient knowledge of the Chinese language, of the minimum number of such factors for which applicants attained positive scores in order for their applications to be considered; whether it will regard the applicant's duration of residence in Hong Kong as one of the factors; if so, of the details; if not, the reasons for that; and
- (3) given that under the existing legislation, ImmD is not required to assign any reason for its decisions to reject naturalisation applications, and applicants may not lodge any appeal against such decisions, whether the Government will amend the relevant provisions so as to avoid EM members whose naturalisation applications have been rejected feeling confused and being discriminated against; if so, of the details; if not, the reasons for that?

Reply:

President,

In accordance with the Hong Kong Special Administrative Region Passports

Ordinance (Cap 539, Laws of Hong Kong), one of the conditions for the issuance of a Hong Kong Special Administrative Region (HKSAR) Passport is that the applicant must be a Chinese citizen. According to Article 18 of and Annex III to the Basic Law of the HKSAR, the Nationality Law of the People's Republic of China (CNL) have been applied in the HKSAR since July 1, 1997. The Standing Committee of the National People's Congress has also endorsed "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) and authorised the HKSAR Government 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 HKSAR Government enacted the Chinese Nationality (Miscellaneous Provisions) Ordinance (Cap 540) in 1997 to stipulate the implementation details of nationality application, form of application and charges, etc.

My response to the questions raised by the Hon Wan is as follows:

(1) From 2009 to 2018, ImmD had received a total of 14 645 applications for naturalisation as a Chinese national, of which 10 844 were approved, 1 707 refused and 228 withdrawn or not processed further. Some 1 800 remaining applications are being processed or were completed in different years. Please refer to Table 1 for a breakdown of the numbers of applications by year.

Applicants with their naturalisation applications approved from 2009 to 2018 were mainly originated from the nationalities of Indian, Pakistani, Indonesian, Vietnamese and Filipino. Please refer to Table 2 for a breakdown of the number of applications received and approved by their original nationalities.

(2) 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:

- (a) they are near relatives of Chinese nationals;
- (b) they have settled in China; or
- (c) they have other legitimate reasons.

Any person who meets the requirements of the CNL can apply to ImmD for naturalisation as a Chinese national.

In processing an application for naturalisation as a Chinese national, ImmD will consider whether the applicant meets the relevant requirements stipulated in the CNL, and it will also consider the merits of each application. In general, without regard to the race, colour or religion of the applicant, consideration will be given 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.

ImmD will take into full account the above factors and make decisions on a fair and appropriate basis. Whether the applicant lives in Hong Kong is one of the factors to be considered. Each application will be handled on its merits, and its assessment will not be based on a single criterion. Therefore, in assessing an application, there is no such requirement that the applicant must meet a certain number of criteria before his/her application for naturalisation as a Chinese national would be approved. Likewise, failing to meet any individual criteria above does not necessarily mean that the application must be refused.

(3) ImmD implements the CNL in the HKSAR in accordance with the requirements of Chinese Nationality (Miscellaneous Provisions) Ordinance. Section 5(1)(b) of the Ordinance concerning nationality application 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 sensitive information such as whether the applicants are of good character. It is therefore not appropriate to disclose the reasons behind the decision. Indeed, 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 allowed for such decisions, the final decision will be made by the appellate authority instead of ImmD, which is designated by the HKSAR Government to implement the CNL as authorised by way of the Explanations.

Applicants who are not satisfied with the application results may request ImmD in writing to reconsider their applications. All reconsiderations will be handled fairly. In addition, applicants whose HKSAR passport applications have been refused may lodge an appeal to the HKSAR Passports Appeal Board.

Thank you President.