For information

LegCo Panel on Security

Requirement of Taking Hong Kong as the Only Place of Permanent Residence

Introduction

At the Security Panel meeting on 13 November 2003, Members requested the Administration to provide a response as to whether the requirement of taking Hong Kong as the only place of permanent residence as contained in paragraphs 64 and 66 of the Court of Final Appeal (CFA) Judgment in *Prem Singh v Director of Immigration (FACV 7/2002)* was binding on future cases.

The Administration's response

2. In paragraph 64 of the CFA judgment, Mr Justice Ribeiro pointed out that "[t]he permanence requirement makes it necessary for the applicant to satisfy the Director both that he intends to establish his permanent home in Hong Kong and that he has taken concrete steps to do so. This means that the applicant must show that his residence here is intended to be more than ordinary residence and that he intends and has taken action to make Hong Kong, and Hong Kong alone, his place of permanent residence. The nature of the permanence requirement may be illuminated by contrasting the 'taking of Hong Kong as a person's place of permanent residence' with merely ordinary residence in Hong Kong."

3. He went on in paragraph 66 of the judgment to say that "[t]he permanence requirement in BL24(2)(4) demands more in at least two respects. The intention must be to reside, and the steps taken by the applicant must be with a view to residing, in Hong Kong permanently or indefinitely, rather than for a limited period. Such intention and conduct must also be addressed to Hong Kong alone as the applicant's only place of permanent residence. These are nonetheless requirements which can and must be met prior to the date of application for verification of permanent resident status, notwithstanding that the applicant is still, at that stage, subject to a limit of stay. Upon verification of an applicant's

status, the limit of stay falls away as a matter of law and, in the normal course, any condition endorsed on the applicant's travel document would be expressly cancelled by the Director."

4. Mr Justice Ribeiro's view above was agreed by three other judges in the CFA and hence formed the majority view of our highest court.

5. Our legal advice is that the CFA's majority view on the "permanence requirement" constitutes a judicial pronouncement and interpretation of Article 24(2)(4) of the Basic Law (BL). In the absence of further interpretation to the contrary by the CFA, it is legitimate and appropriate for the Director of Immigration ("The Director") to rely on the CFA's interpretation of the permanence requirement as referred to above in processing verification of eligibility for permanent identity cards (VEPIC) applications from persons not of Chinese nationality who seek to establish their permanent resident status under BL24(2)(4).

Security Bureau
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