Australian Government

Refugee Review Tribunal

Country Advice Hong Kong

China – Hong Kong – HKG36459 – Right to Land – Right of Abode – Residence – Nationality

1 April 2010

1. Please provide information on whether a Right to Land (RTL) in Hong Kong Special Administrative Region (HKSAR) is the equivalent to nationality. Please include information from HKSAR as to whether it regards a person with a RTL to be a national of HKSAR.

The Right to Land in the Hong Kong SAR is not the equivalent to nationality; it does not immediately and automatically allow the holder to possess permanent residence (right of abode), nor does it allow the holder the right to a Hong Kong SAR passport. Holders of permanent residency identity cards and passports are also nationals of the People's Republic of China. Nowhere does the Hong Kong SAR government refer to either the right to land or the right of abode as HKSAR nationality or its equivalent. The right to land is not dissimilar to a working visa, with the added benefit of allowing the holder to reapply for permanent residence after several conditions are met, including residence of seven years.

Right to Land

A person formerly in possession of permanent residence in Hong Kong SAR retains the right to land (RTL). The Immigration Department of the Government of the Hong Kong Special Administrative Region states on its website that "[a] person who ceases to have the status of a permanent resident of the HKSAR will automatically acquire the right to land in Hong Kong in accordance with the law." *RRT Country Advice HKG35807*[1] has previously addressed the issue of whether former residents of pre-1997 Hong Kong are entitled to the right to land in the HKSAR, establishing that there are provisions in HKSAR law that allow such persons the right to apply to have the right to land granted.[2]

According to the Immigration Department of the Government of the Hong Kong Special Administrative Region, RTL allows the holder **"to enter Hong Kong freely to live, study or work without any restriction."**[3] This is not, however, the same as permanent residence or citizenship as a RTL holder may be deported and is not entitled to a permanent identity card or a Hong Kong SAR passport. These are only granted to persons in possession of the Right of Abode (indicated by possession of a permanent identity card) and in possession of Chinese nationality.

[1] RRT Country Advice 2010, *Country Advice HKG35807*, 11 January – Attachment 1

[2] 'Chapter: 115 Immigration Ordinance' (Version Date: 30 June 1997), The Government of the Hong Kong Special Administrative Region Department of Justice Bilingual Laws Information System website, Section 2AAA – Attachment 2

[3] 'Frequently Asked Questions (FAQs) – Right of Abode in HKSAR' 2009, Immigration Department of the Government of the Hong Kong Special Administrative Region website, 27 February http://www.immd.gov.hk/ehtml/faq_roaihksar.htm – Accessed 6 January 2010 – Attachment 3

Right of Abode

A person with RTL in the Hong Kong SAR has the right to reapply for permanent residence (right of abode) if the following criteria are met:

- you entered Hong Kong with a valid travel document
- 'immediately before' the date on which you apply for the ROA, you have ordinarily resided in Hong Kong for a continuous period of not less than seven years; and
- you have made a declaration and have provided the required information to demonstrate that you have taken Hong Kong as your place of permanent residence; and
- your application to have the status of a permanent resident in the HKSAR has been approved by the Director of Immigration.[4]

Right of Abode allows the following:

- to land in the HKSAR;
- to be free from any condition of stay (including a limit of stay) in the HKSAR;
- not to be deported from the HKSAR; and
- not to be removed from the HKSAR.[5]

Evidence of ROA is a permanent identity card (PIC). A person with RTL applies for ROA once they have met the conditions already outlined (including residence in Hong Kong for at least seven years) by applying for a PIC. The Immigration Department of the Government of the Hong Kong Special Administrative Region website states that "[b]efore you proceed to register for the issue of a PIC, you will need to show that you are eligible for registration under the Registration of Persons Ordinance and Regulations. A person must be in possession of a PIC and be a Chinese national before they can apply for a HKSAR passport:

> You are regarded as a person of Chinese nationality if you are a Hong Kong resident:
> (a) of Chinese descent who was born in Hong Kong or other parts of China; or
> (b) who fulfils the criteria of Chinese nationality in the Nationality Law of the People's Republic of China.[6]

Nationality

Hong Kong is neither a state nor a distinct nation; since 1997 it has had the status of being a special administrative region (SAR) of the People's Republic of China (PRC). Issues of standard of living or identity are irrelevant when attempting to determine whether HKSAR RTL or ROA constitute the equivalency of nationality for Convention purposes.

The Hong Kong SAR government states that persons with right of abode and in possession of a Hong Kong SAR identity card can apply for Chinese nationality, subject to the Nationality Law of the People's Republic of China. In order to qualify for a HKSAR passport you must be a national of China (PRC citizen), a permanent resident of the HKSAR (ROA) and a holder

[4] 'Topical Issues – 7. The position of Non-Chinese citizens' 2008, Immigration Department of the Government of the Hong Kong Special Administrative Region website, 15 December http://www.immd.gov.hk/ehtml/topical_3_7.htm – Accessed 6 January 2010 – Attachment 4
[5] 'Topical Issues – 1. Right of Abode and other related terms' 2008, Immigration Department of the Government of the Hong Kong Special Administrative Region website, 15 December http://www.immd.gov.hk/ehtml/topical_3_1.htm – Accessed 6 January 2010 – Attachment 5
[6] 'Eligibility for HKSAR Passport' (undated), Hong Kong Special Administrative Region website http://www.gov.hk/en/residents/immigration/traveldoc/hksarpassport//eligibilityforpassport.htm – Accessed 31 March 2010 – Attachment 6

of a valid Hong Kong permanent identity card.[7] Possession of ROA, a PIC and a HKSAR passport means that the holder is a Chinese national; there is no de facto Hong Kong nationality.

Possession of RTL does not automatically entitle the holder to a PIC and a HKSAR passport. Nor does it automatically entitle the holder to PRC nationality. A person without any other nationality and in possession of the right to land in the Hong Kong SAR remains nationless (i.e. without citizenship). They do, however, have the right to 'freely live, study or work without any restriction' in the Hong Kong SAR of the People's Republic of China.[8] The Right to Land in the Hong Kong SAR is, however, a pathway to both the Right of Abode and PRC nationality.

Attachments

1. RRT Country Advice 2010, *Country Advice HKG35807*, 11 January.
2. 'Chapter: 115 Immigration Ordinance' (Version Date: 30 June 1997), The Government of the Hong Kong Special Administrative Region Department of Justice Bilingual Laws Information System website http://www.legislation.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/$FILE/CAP_115_e_b5.pdf - Accessed 6 January 2010.
3. 'Frequently Asked Questions (FAQs) – Right of Abode in HKSAR' 2009, Immigration Department of the Government of the Hong Kong Special Administrative Region website, 27 February http://www.immd.gov.hk/ehtml/faq_roaihksar.htm – Accessed 6 January 2010.
4. 'Topical Issues – 7. The position of Non-Chinese citizens' 2008, Immigration Department of the Government of the Hong Kong Special Administrative Region website, 15 December http://www.immd.gov.hk/ehtml/topical_3_7.htm – Accessed 6 January 2010.
5. 'Topical Issues – 1. Right of Abode and other related terms' 2008, Immigration Department of the Government of the Hong Kong Special Administrative Region website, 15 December http://www.immd.gov.hk/ehtml/topical_3_1.htm – Accessed 6 January 2010.
6. 'Eligibility for HKSAR Passport' (undated), Hong Kong Special Administrative Region website http://www.gov.hk/en/residents/immigration/traveldoc/hksarpassport//eligibilityforpassport.htm – Accessed 31 March 2010.
7. 'HKSAR Passport' 2010, Hong Kong Special Administrative Region Government website, March http://www.gov.hk/en/residents/immigration/traveldoc/hksarpassport// – Accessed 31 March 2010 – Attachment 7

[7] 'HKSAR Passport' 2010, Hong Kong Special Administrative Region Government website, March http://www.gov.hk/en/residents/immigration/traveldoc/hksarpassport// – Accessed 31 March 2010 – Attachment 7

[8] 'Frequently Asked Questions (FAQs) – Right of Abode in HKSAR' 2009, Immigration Department of the Government of the Hong Kong Special Administrative Region website, 27 February http://www.immd.gov.hk/ehtml/faq_roaihksar.htm – Accessed 6 January 2010 – Attachment 3