



Australian Government
Refugee Review Tribunal

Country Advice

Hong Kong

Hong Kong – HKG35807 – Hong Kong
Certificate of Identity – Right of return to
Hong Kong – Permanent residence

11 January 2010

1 Can a person legally return and settle in Hong Kong SAR?

If a person is not a person of Chinese nationality, sources indicate that such a person may have the right of abode in the Hong Kong Special Administrative Region (HKSAR) pursuant to paragraph 2(d) of Schedule 1 to the HKSAR Immigration Ordinance, which indicates that “[a] person not of Chinese nationality who has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than 7 years and has taken Hong Kong as his place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region” has the right of abode in the HKSAR. However, paragraph 7(a) of Schedule 1 to the Immigration Ordinance indicates that a permanent resident of the HKSAR will lose that status if “being a person falling within the category in paragraph 2(d) or (e) has been absent from Hong Kong for a continuous period of not less than 36 months since he ceased to have ordinarily resided in Hong Kong”. Pursuant to Section 2AAA of the Immigration Ordinance, a person who ceases to be a permanent resident of the HKSAR in the circumstances set out in the section has the right to land in Hong Kong, not to have any condition of stay in Hong Kong imposed upon him, and not to have a removal order made against him. This right ceases if a deportation order is made and is in force against the person.

Certificate of Identity

According to a letter dated 5 June 1993 from the Australian Consulate General Hong Kong Migration Office, Certificates of Identity were “issued to Hong Kong permanent residents who are unable to obtain any other travel document. The holder must have right of abode in Hong Kong and hold a Hong Kong permanent identity card. We have been advised by Hong Kong Immigration that a C of I holder may be stateless but may also be a PRC national.”¹ Information on Hong Kong Certificates of Identity provided to the Immigration and Refugee Board of Canada by an immigration officer at the British High Commission in Ottawa in November 1993 indicates that “[t]he Hong Kong authorities issue certificates of identity, which are travel documents, to stateless individuals arriving from China who wish to travel abroad. Holders of these travel documents are entitled to reside and work in Hong Kong as long as their travel documents are valid.”²

In a telephone conversation with the RRT on 30 August 1994, an officer from the British High Commission said that there were “two types of certificates of identity: a green certificate that signifies the person has permanent residency, that is they must have at least seven years

¹ Australian Consulate General Hong Kong Migration Office 1993, *Refugee claimants - prior protection issues*, 5 May – Attachment 1.

² Immigration and Refugee Board of Canada 1993, *HKG15325.E – Hong Kong: Information on the certificate of identity*, 1 November <http://www.unhcr.org/refworld/country,...HKG..3ae6abd18f.0.html> – Accessed 6 January 2010 – Attachment 2.

residency in Hong Kong to qualify or an other coloured certificate means the person had less than seven years residency and no permanent right to abode in Hong Kong.” He also said that a certificate of identity allowed “a person to work, buy property exit and enter Hong Kong providing it is valid.”³

Further information provided to the RRT by the Hong Kong Department of Immigration in a letter dated 26 September 1994 indicates that:

In general, Hong Kong Certificate of Identity are normally issued to Hong Kong permanent residents without nationality and have a ten year validity. Certificate holders are allowed to enter Hong Kong at any time provided the Certificate is still valid. No re-entry visa is required.

With effect from 1 July 1987, only persons of Chinese race who have been ordinarily resident in Hong Kong for a continuous period of not less than seven years and who do not hold and are unable to obtain a national passport or any other travel document will be eligible for a Certificate of Identity. The holder and children included in the Certificate must also hold Hong Kong permanent identity cards (HK PICs). To this effect, an endorsement will be entered onto page 4 of the Certificate.⁴

According to a reciprocity schedule for Hong Kong on the US Department of State website, the Hong Kong Certificate of Identity “has been issued to persons with the right of abode in Hong Kong who were not born there, or who lack proof of birth in Hong Kong. The issuance of these documents terminated after July 1, 1997 and Certificates of Identity ceased to be valid in 2007. Upon expiration, qualified bearers were able to replace the documents with the HKSAR passport.”⁵

Right of Abode

In relation to the current situation regarding who is a permanent resident and is entitled to the right of abode in the HKSAR, the Immigration Department of the Government of the Hong Kong Special Administrative Region website includes the following information on who has the right of abode in Hong Kong:

Q1: Who can enjoy the right of abode in the HKSAR?

A1: According to paragraph 2(a) to (f) of Schedule 1 to the Immigration Ordinance which has come into operation on 1 July 1997, a person who is within one of the following categories is a permanent resident of the HKSAR and enjoys the right of abode in the HKSAR :

(a) A Chinese citizen born in Hong Kong before or after the establishment of the HKSAR.

(b) A Chinese citizen who has ordinarily resided in Hong Kong for a continuous period of not less than 7 years before or after the establishment of the HKSAR.

³ [Name deleted] 1994, ‘Record of Conversation with [name deleted] from the British High Commission on 30 Aug. 1994’, 30 August – Attachment 3.

⁴ [Name deleted] 1994, ‘Letter to RRT re Hong Kong certificate of identity and right of abode’, 26 September – Attachment 4.

⁵ US Department of State (undated), *Hong Kong Reciprocity Schedule* http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3579.html# - Accessed 8 January 2010 - Attachment 5.

(c) A person of Chinese nationality born outside Hong Kong before or after the establishment of the HKSAR to a parent who, at the time of birth of that person, was a Chinese citizen falling within category (a) or (b).

(d) A person not of Chinese nationality who has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than 7 years and has taken Hong Kong as his place of permanent residence before or after the establishment of the HKSAR.

(e) A person under 21 years of age born in Hong Kong to a parent who is a permanent resident of the HKSAR in category (d) before or after the establishment of the HKSAR if at the time of his birth or at any later time before he attains 21 years of age, one of his parents has the right of abode (ROA) in Hong Kong.

(f) A person other than those residents in categories (a) to (e), who, before the establishment of the HKSAR, had the ROA in Hong Kong only.⁶

In relation to the law in China as to whether persons who were born in China are of Chinese nationality, Article 4 of the Nationality Law of the People's Republic of China indicates that "[a]ny person born in China whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality." Article 6 of the Nationality Law of the People's Republic of China also indicates that "[a]ny person born in China whose parents are stateless or of uncertain nationality and have settled in China shall have Chinese nationality."

Article 5 of the Nationality Law of the People's Republic of China indicates that:

Any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.⁷

In relation to calculating the period of seven years referred to in paragraph 2(d), paragraphs 1(4) and (5) of Schedule 1 to the Immigration Ordinance indicate that:

(4) For the purposes of calculating the continuous period of 7 years in which a person has ordinarily resided in Hong Kong, the period is reckoned to include a continuous period of 7 years-

(a) for a person under paragraph 2(b), at any time before or after the establishment of the Hong Kong Special Administrative Region; and

(b) for a person under paragraph 2(d), before or after the establishment of the Hong Kong Special Administrative Region but immediately before the date when the person applies to the Director for the status of a permanent resident of the Hong Kong Special Administrative Region.

(5) A person is settled in Hong Kong if-

(a) he is ordinarily resident in Hong Kong; and

⁶ '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/ehhtml/faq_roaihksar.htm - Accessed 6 January 2010 – Attachment 6.

⁷ 'Topical Issues – 9. Nationality Law of the People's Republic of China and the National People's Congress' Explanations of how it is to be applied to the HKSAR' 2008, Immigration Department of the Government of the Hong Kong Special Administrative Region website, 15 December http://www.immd.gov.hk/ehhtml/topical_3_9.htm - Accessed 6 January 2010 – Attachment 7.

- (b) he is not subject to any limit of stay in Hong Kong.⁸

The HKSAR Immigration Department website includes the following information on whether a person is ordinarily resident in Hong Kong:

Ordinary residence

A person is ordinarily resident in Hong Kong if:

he remains in Hong Kong legally, voluntarily and for a settled purpose (such as for education, business, employment or residence etc.), whether of short or long duration.

A person does not cease to be ordinarily resident in Hong Kong if:

he is temporarily absent from Hong Kong. The circumstances of the person and the absence are relevant in determining whether a person has ceased to be ordinarily resident in Hong Kong. The circumstances may include-

- the reason, duration and frequency of any absence from Hong Kong;
- whether he has habitual residence in Hong Kong;
- employment by a Hong Kong based company; and
- the whereabouts of the principal members of his family (spouse and minor children).

A person shall *not* be treated as ordinarily resident in Hong Kong :

during any period in which he remains in Hong Kong-

- with or without the authority of the Director of Immigration, after landing unlawfully; or
- in contravention of any condition of stay; or
- as a refugee; or while in detention pending determination of refugee status or removal; or
- while employed as a contract worker, who is from outside Hong Kong, under a Government importation of labour scheme; or
- while employed as a domestic helper who is from outside Hong Kong; or
- as a member of a consular post within the meaning of the Consular Relations Ordinance; or
- as a member of the Hong Kong Garrison; or
- as a holder of a prescribed Central People's Government travel document; or
- during any period of imprisonment or detention pursuant to the sentence or order of any court.⁹

Paragraph 3 of Schedule 1 to the Immigration Ordinance sets out what is required for a person to establish permanent residency under paragraph 2(d) of the Schedule. This includes furnishing information to the Director of Immigration “to satisfy him that the person has taken Hong Kong as his place of permanent residence.” This information may include “whether he has habitual residence in Hong Kong... whether the principal members of his family (spouse and minor children) are in Hong Kong... whether he has a reasonable means of income to support himself and his family”, and “whether he has paid his taxes in accordance with the law.” He must “make a declaration in the form the Director stipulates that he has taken Hong

⁸ ‘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, Schedule 1 [http://www.legislation.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/\\$FILE/CAP_115_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/$FILE/CAP_115_e_b5.pdf) - Accessed 6 January 2010 – Attachment 8.

⁹ ‘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/ehhtml/topical_3_1.htm - Accessed 6 January 2010 – Attachment 9.

Kong as his place of permanent residence” and “be settled in Hong Kong at the time of the declaration.”

Paragraph 6(1) of Schedule 1 to the Immigration Ordinance indicates that:

A person who is not of Chinese nationality and who was a permanent resident of Hong Kong before 1 July 1997 is taken to be a permanent resident of the Hong Kong Special Administrative Region under paragraph 2(d) and exempt from the requirements under paragraph 3 if-

- (a) he was settled in Hong Kong immediately before 1 July 1997;
- (b) after he ceased to be settled in Hong Kong immediately before 1 July 1997 he returns to settle in Hong Kong within the period of 18 months commencing on 1 July 1997; or
- (c) after he ceased to be settled in Hong Kong immediately before 1 July 1997 he returns to settle in Hong Kong after the period of 18 months commencing on 1 July 1997 but only if he has not been absent from Hong Kong for a continuous period of not less than 36 months.

Paragraph 7 of Schedule 1 to the Immigration Ordinance sets out when a person will lose permanent residency of the HKSAR:

A permanent resident of the Hong Kong Special Administrative Region loses the status of such resident only if- (Amended 28 of 1998 s. 2(2))

- (a) being a person falling within the category in paragraph 2(d) or (e) has been absent from Hong Kong for a continuous period of not less than 36 months since he ceased to have ordinarily resided in Hong Kong; or
- (b) being a person falling within the category in paragraph 2(f), has been absent from Hong Kong for a continuous period of not less than 36 months after he obtained the right of abode in any place other than Hong Kong and has ceased to have ordinarily resided in Hong Kong.¹⁰

Question 4 of the Frequently Asked Questions section on the HKSAR Immigration Department website also summarises the circumstances under which a permanent resident of the HKSAR who is not of Chinese nationality will lose permanent resident status.¹¹

A reply provided by the Immigration Department in Hong Kong to e-mails sent by the RRT in relation to an RRT research response dated 9 March 2007 which looks at whether ethnic Chinese who had Solomon Islands citizenship, but who had previously lived in Hong Kong and had Hong Kong identity cards, had the right to enter and reside in Hong Kong¹², includes the following “general information regarding the residential status of a Hong Kong resident”:

Regulation 22 of the Registration of Persons Regulations, Cap. 177A, Law of Hong Kong, stipulates that a valid permanent identity card shall be evidence that the person to whom the card relates enjoys the right of abode in Hong Kong.

¹⁰ ‘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, Schedule 1 [http://www.legislation.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/\\$FILE/CAP_115_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/$FILE/CAP_115_e_b5.pdf) - Accessed 6 January 2010 – Attachment 8.

¹¹ ‘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/ehhtml/faq_roaihksar.htm - Accessed 6 January 2010 – Attachment 6.

¹² RRT Country Research 2007, *Research Response HKG31001*, 9 March – Attachment 10.

A Chinese citizen will continue to enjoy the right of abode in the HKSAR as long as he remains as a Chinese citizen. He will not lose his status as a permanent resident even if he is absent from Hong Kong for long periods.

“Chinese citizen” means a person of Chinese nationality under the Nationality Law of the People’s Republic of China, as implemented in the HKSAR pursuant to Article 18 of and Annex III to the Basic Law and interpreted in accordance with 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 HKSAR adopted at the 19th meeting of the Standing Committee of the National People’s Congress at the 8th National People’s Congress on 15 May 1996.

Under Article 5 of the Nationality Law of the People’s Republic of China, any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.

Under paragraph 7(a) of Schedule 1 to the Immigration Ordinance, Cap. 115, Laws of Hong Kong, a HKSAR permanent resident who is not of Chinese nationality will lose the status of a permanent resident if he has been absent from Hong Kong for a continuous period of not less than 36 months since he ceased to have ordinarily resided in Hong Kong.

A person who loses his permanent resident status will automatically acquire the right to land in the HKSAR under Section 2AAA of the Immigration Ordinance. This includes the right to land in Hong Kong, the right not to have imposed upon him any condition of stay in Hong Kong, and the right not to have a removal order made against him.¹³

Section 2AAA of the HKSAR Immigration Ordinance indicates that:

- (1) Subject to subsections (2) and (3), any person who-
 - (a) immediately before 1 July 1997 was a Hong Kong permanent resident under this Ordinance as then in force but did not become a permanent resident of the Hong Kong Special Administrative Region upon the commencement of the Immigration (Amendment) (No. 2) Ordinance 1997 (122 of 1997) shall, immediately upon such commencement;
 - (b) is a permanent resident of the Hong Kong Special Administrative Region but ceases to be such a permanent resident by virtue of the operation of this Ordinance shall, immediately upon such cessation,have the right-
 - (i) to land in Hong Kong;
 - (ii) not to have imposed upon him any condition of stay in Hong Kong, and any condition of stay that is imposed on him shall have no effect; and
 - (iii) not to have a removal order made against him.
- (2) If a deportation order is made against a person who has the right to land in Hong Kong under subsection (1), the right shall cease while the deportation order is in force.
- (3) For the avoidance of doubt, it is declared that a holder of a permanent identity card defined in section 1A of the Registration of Persons Ordinance (Cap 177) whose permanent identity card could have been declared invalid under regulation 3D(1) of the Registration of Persons Regulations (Cap 177 sub. leg.) on the ground that he has never had the right of abode in Hong Kong shall not have the right to land in Hong Kong under subsection (1).¹⁴

¹³ Immigration Department of the Government of the Hong Kong Special Administrative Region, Information and Liaison Section 2007, Email to RRT Country Research: ‘Request for Information - Right of Abode (HKG31001)’, 4 January – Attachment 11.

¹⁴ ‘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, Schedule 1

2. Would a person be able to apply for permanent residency in Hong Kong SAR and be able to live, work or study without restriction?

As previously mentioned, pursuant to Section 2AAA of the Immigration Ordinance, a person who ceases to be a permanent resident of the HKSAR in the circumstances set out in the section has the right to land in Hong Kong, not to have any condition of stay in Hong Kong imposed upon him, and not to have a removal order made against him. This right ceases if a deportation order is made and is in force against the person. Information on the HKSAR Immigration Department website indicates that a person who loses HKSAR permanent resident status and acquires the right to land in Hong Kong in accordance with the law can enter Hong Kong freely to live, study or work without any restriction. A person may apply to the Right of Abode Section of the Immigration Department for assessment of whether the person has lost permanent resident status and has the right to land in the HKSAR. Information on the HKSAR Immigration Department website also indicates that a person may be able to re-acquire the right of abode in the HKSAR if the person subsequently satisfies certain requirements.

Question 4 of the Frequently Asked Questions section on the HKSAR Immigration Department website summarises the circumstances under which a permanent resident of the HKSAR who is not of Chinese nationality will lose permanent resident status. It is also stated 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. He will be able to enter Hong Kong freely to live, study or work without any restriction. A person may ascertain whether he has lost the status of a permanent resident of the HKSAR by applying for verification of eligibility for permanent identity card with the Right of Abode Section of the Immigration Department for assessment of whether he has lost the permanent resident status and has the right to land in the HKSAR.¹⁵

A document on the position of non-Chinese citizens on the HKSAR Immigration Department website indicates that a non-Chinese citizen who was a permanent resident of Hong Kong before 1 July 1997 and loses HKSAR permanent resident status because of failure to meet requirements mentioned in the document, automatically acquires the right to land and “will still be able to enter the HKSAR freely to live, study and work, without any restriction.” It is also stated that the person would “also be able to re-acquire the ROA in the HKSAR” if the person subsequently satisfied certain requirements, which include:

you have entered Hong Kong with a valid travel document and

- ‘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

[http://www.legislation.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/\\$FILE/CAP_115_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/CurAllEngDoc/ED717360D64A043E482575EE003DBF1A/$FILE/CAP_115_e_b5.pdf) - Accessed 6 January 2010 – Attachment 8.

¹⁵ ‘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/ehhtml/faq_roaihksar.htm - Accessed 6 January 2010 – Attachment 6.

- your application to have the status of a permanent resident in the HKSAR has been approved by the Director of Immigration.¹⁶

List of Sources Consulted

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Immigration & Refugee Board of Canada <http://www.irb-cisr.gc.ca/>

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UN High Commissioner for Refugees (UNHCR) Refworld

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¹⁶ '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/ehhtml/topical_3_7.htm - Accessed 6 January 2010 – Attachment 12.

4. [Name deleted] 1994, 'Letter to RRT re Hong Kong certificate of identity and right of abode', 26 September. (CISNET Hong Kong CX14709)
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