



Australian Government
Refugee Review Tribunal

Country Advice

Hong Kong

Hong Kong – HKG36048 – Treatment of
returnees to the HKSAR – Right to enter
and reside in Indonesia

11 February 2010

1 Can you please provide information on whether a person born in Indonesia would have a right to enter and live in Indonesia?

Under the provisions of *Act No. 3 of 10 April 1946 Concerning Citizens and Residents of Indonesia*, Article 1(h) indicates that a person born in Indonesia to unknown parents or to parents of unknown nationality “shall be an Indonesian citizen”.¹

The full provisions of Article 1 of *Act No. 3 of 10 April 1946 Concerning Citizens and Residents of Indonesia* are as follows:

Article 1. A person shall be an Indonesian citizen if:

- (a) He belongs to the indigenous population of Indonesia; or
- (b) Though not falling within that class, he is a descendant of a person of that class and was born and domiciled within the territory of the Indonesian State, or, though not a descendant of a person of that class, he was born within the territory of Indonesia and has been domiciled therein for at least five consecutive years, and has attained the age of 21 or has married, unless there has been submitted a declaration that he should not become an Indonesian citizen because he is a citizen of another State;
- (c) He has been granted Indonesian citizenship by naturalization;
- (d) He is a legitimate, legitimized or legally acknowledged child of a man who at his birth was an Indonesian citizen;
- (e) His father, being an Indonesian citizen, died within 300 days before his birth;
- (f) He has been legally acknowledged only by his mother, and she was at the time of his birth an Indonesian citizen;
- (g) He has not been legally recognized by his father or mother but was born within the territory of the Indonesian State;
- (h) He was born within the territory of the Indonesian State to unknown parents or to parents of unknown nationality.¹

Article 5 of the 1946 legislation provides for the acquisition of citizenship by naturalization, but requires that persons seeking naturalization should have “attained the age of 21” before the introduction of a new law on citizenship in 1958.

¹ *Act No. 3 of 10 April 1946 Concerning Citizens and Residents of Indonesia* 1946 – Attachment 1.

On 1 August 1958, *Law No. 62 of 1958, Law on the Citizenship of the Republic of Indonesia* came into force. The provisions of Article 1 indicate that a child born in Indonesia to parents who were not Indonesian nationals would have been entitled to citizenship if either of Articles 1(h) or 1(i) applied:

Article 1. Citizens of the Republic of Indonesia are:

a. persons who, based on the legislation and/or treaties and/or regulations prevailing since the August 17, 1945 Proclamation, are already citizens of the Republic of Indonesia;

...

h. persons who are born within the territory of the Republic of Indonesia, if both parents have no nationality or as long as the nationality of both parents is unknown;

i. persons born within the territory of the Republic of Indonesia who have not acquired the nationality of the father or mother at the time of their birth and as long as they do not acquire the nationality of either their father or mother²

Article VIII of the “Concluding regulations” of the 1958 law indicates, however, that these provisions of Article 1 could not be applied with respect to a person born in 1946, the new law being retroactively valid only to December 1949. Article VIII states:

This Law comes into force on the date of promulgation with the stipulation that the regulations in article 1 letter b to letter j, article 2, article 17 letter a, c and h are valid retroactively December 27, 1949.²

Amongst the provisions of Article 5 of the 1958 law on the acquisition of citizenship by naturalization is the requirement at subparagraph 5(2)a that the petitioner “have reached the age of 21”.

Notwithstanding the above information, it seems that, if an individual had citizenship, they would subsequently have lost that citizenship in accord with Article 17(j) of the 1958 legislation if the Certificate of Identity granted in Hong Kong was considered to have had “the character of a passport” and was still valid:

Article 17.

The citizenship of the Republic of Indonesia is lost because of:

...

j. having a passport or certificate which has the character of a passport from a foreign country in one’s name which is still valid²

Alternatively, citizenship may have been lost under the provisions of Article 17(k):

Article 17.

The citizenship of the Republic of Indonesia is lost because of:

...

k. other than for state’s service, domiciling abroad during 5 consecutive years by not declaring one’s wish as to continue being a citizen before the period has lapsed and thereafter every two years; such a wish shall be declared to the Representation of the Republic of Indonesia at one’s residence.²

² *Law No. 62 of 1958, Law on the Citizenship of the Republic of Indonesia 1958*, UNHCR website <http://www.unhcr.org/refworld/docid/3ae6b4ec8.html> – Accessed 22 January 2010 – Attachment 2.

If citizenship was lost under Article 17(k), Article 18 allowed for citizenship to be regained on the former citizen's return to Indonesia:

Article 18.

A person who loses [sic] the citizenship of the Republic of Indonesia as mentioned in article 17 letter k. regains the citizenship of the Republic of Indonesia if the person is domiciled in Indonesia based on an Entry Permit and makes a statement as to that effect. Such a statement shall be made to the Pengadilan Negeri at the residence of the person within 1 year after the person is domiciled in Indonesia.²

The current legislation on citizenship, *Law of the Republic of Indonesia No. 12 on Citizenship of the Republic of Indonesia*, was introduced in August 2006. The criteria for citizenship are provided in Article 4, and paragraphs 4(9) and 4(11) may be of relevance in this case:

Article 4

A Citizen of the Rep. of Indonesia is:

- (1). All persons whom by law and/or based on agreements between the Government of the Rep. of Indonesia and other countries prior to the application of this Decree have already become Citizens of the Rep. of Indonesia;
- (2). Children born through legal wedlock from an Indonesian father and mother;
- (3). Children born through legal wedlock from an Indonesian father and an alien mother;
- (4). Children born through legal wedlock from an alien father and an Indonesian mother;
- (5). Children born through legal wedlock from an Indonesian mother and a stateless father or whose country does not provide automatic citizenship to their offspring;
- (6). Children born within 300 (three hundred) days after the father has passed away, under legal wedlock, and whose father is an Indonesian citizen;
- (7). Children born out of legal wedlock from an Indonesian mother;
- (8). Children born out of legal wedlock from an alien mother who is claimed by the Indonesian father as his natural child and such claim is declared before the child reaches the age of 18 (eighteen) or before the child has married;
- (9). Children born in Indonesian territory whose parents are of undetermined citizenship at the time of the child's birth;
- (10). Children newly born and found in Indonesian territory and whose parent's are undetermined;
- (11). Children born in Indonesian territory whom at the time of birth both parents were stateless or whose whereabouts are undetermined;
- (12). Children born outside the Rep. of Indonesia from an Indonesian father and mother hom due to law prevailing in the country of birth automatically provides citizenship to the child;
- (13). Children born from a father and mother who was granted citizenship and died before the parents had sworn their allegiance.³

On loss of citizenship, the current law states that:

Article 23

An Indonesian citizen will lose their citizenship due to the following:

...

- h. Possesses a passport or travel document equivalent to a passport from a foreign country or a letter that may be construed as a valid citizenship identity from another country on his/her name; or
- i. Living outside the territories of the Rep. of Indonesia for 5 (five) consecutive years for non official purposes, without legal reason and deliberately refuses to declare their intention to remain as Indonesian citizens before the 5 (five) year limit ends, and in each of the next 5 (five) years the said person fails to declare their intention of retaining their citizenship to the

³ *Law of the Republic of Indonesia No. 12 on Citizenship of the Republic of Indonesia* 2006, UNHCR website, 1 August <http://www.unhcr.org/refworld/docid/4538aae64.html> – Accessed 22 January 2010 – Attachment 3.

Indonesian Representative offices in which the said person's residence is under their jurisdiction although the said Representative Office has duly informed them in writing, as long as the incumbent does not become stateless because of such negligence.³

An individual may now be able to apply to gain citizenship through naturalization. If an individual has previously held but lost Indonesian citizenship, Article 32 provides that “[a] person who has lost their Indonesian citizenship may regain their citizenship through naturalization procedures as stipulated in Articles 9 to Article 18 and Article 22”. With respect to either gaining or regaining citizenship, the Act includes the following criteria for acquiring citizenship through naturalization:

REQUIREMENTS AND PROCEDURES FOR ACQUIRING CITIZENSHIP OF THE REP. OF INDONESIA

Article 8

Citizenship of the Rep. of Indonesia may be acquired through naturalization.

Article 9

Requests for naturalization may be forwarded by the applicant upon meeting the following requirements:

- a. Aged 18 (eighteen) or married;
- b. At the time of forwarding the application, the applicant has resided in Indonesian territory for at least 5 (five) consecutive years or at least 10 (ten) years intermittently;
- c. Sound in health and mind;
- d. Able to speak Bahasa Indonesia and acknowledges the state basic principles of Pancasila and the 1945 Constitution;
- e. Was never legally prosecuted due to acts of crime and sentenced jail for 1 (one) year or more;
- f. Upon acquiring Indonesian Citizenship, will relinquish any other citizenship;
- g. Employed and/or has a steady income; and
- h. Pay a naturalization fee to the Government Treasury.

...

Article 13

- (1). The President shall grant or reject requests for naturalization.
- (2). The granting of requests for naturalization as mentioned in Paragraph (1) is determined through a Presidential Decree.
- (3). The Presidential Decree as stipulated in Paragraph (2) shall be determined at the most 3 (three) months since the application is received by the Minister and will be informed to the applicants within 14 (fourteen) days since the Presidential Decree is issued.
- (4). Rejection of naturalization as mentioned in (1) must be supported by reasons and informed by the Minister to the incumbent at the most within 3 (three) months since the application was received by the Minister.³

Information from the website of the Embassy of the Republic of Indonesia in Canberra on the subject of Temporary Stay Visas makes specific mention of those “seeking repatriation”, as follows:

Temporary Stay Visa is good for a single entry if presented within 3 (three) months from the date of issuance and is valid for a maximum stay of 1 (one) year). It is granted upon the authorization of the Directorate General of Immigration in Jakarta. To expedite the authorization, it is advisable to have the sponsor in Indonesia submit also the application directly to the Directorate General of Immigration in Jakarta. VITAS can be extended in Indonesia.

VITAS are for working and non-working purposes; such as foreign investment, family re union, repatriation, and retirement.

...

For those seeking repatriation (returning to the country of origin), must provide proof of former Indonesian citizenship and proof of a guarantee of living expenses in Indonesia.⁴

2 Please provide any information on the treatment of returnees to the HKSAR.

Amongst the sources consulted, information on the experience of people returning to live in the Hong Kong Special Administrative Region (HKSAR) indicates that some difficulties may be encountered by returnees, including restricted job prospects for those not fluent in Cantonese and overcrowded housing.

The United States Department of State's report on human rights practices in Hong Kong for 2008 observed that "persons not fluent and literate in Cantonese faced tremendous challenges in seeking employment and in choice of education", and that government and non-government agencies were involved in programmes to redress some of these problems. The report states:

Although 95 percent ethnic Chinese, Hong Kong is a multiethnic society with persons from a number of ethnic groups recognized as citizens or legal permanent residents of the SAR.

...

While English and Cantonese are the two official languages, persons not fluent and literate in Cantonese faced tremendous challenges in seeking employment and in choice of education. The Constitutional and Mainland Affairs Bureau sponsored a "Cross-Cultural Learning Programme for Non-Chinese Speaking Youth" through grants to NGO service providers.⁵

Information on the website of the Government of Hong Kong provides the following information regarding language use in Hong Kong:

Chinese and English are the official languages of Hong Kong. English is widely used in the Government and by the legal, professional and business sectors. Trilingual professionals who speak English, Cantonese and Putonghua play a vital role in the numerous enterprises trading in Hong Kong or doing business with mainland China and Taiwan.

- Cantonese speakers: 88.7% of population
- Putonghua speakers: 1.1% of population
- Other Chinese dialect speakers: 5.8% of population
- English speakers: 3.1% of population
- Other language speakers: 1.3% of population⁶

An article in Hong Kong's *South China Morning Post* in November 2008 referred to a growing demand from non-Chinese speaking residents, including overseas Chinese and returnees, for a lower-cost alternative to international schools, and that the government's

⁴ 'Temporary Stay Visa (VITAS)' (undated), Embassy of Indonesia in Canberra website http://www.kbri-canberra.org.au/consular/visa/visa_temp.htm – Accessed 22 January 2010 – Attachment 4.

⁵ US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – China*, February, Section 5 – Attachment 5.

⁶ 'Hong Kong – the Facts' (undated), Government of Hong Kong website <http://www.gov.hk/en/about/abouthk/facts.htm> – Accessed 1 February 2010 – Attachment 6.

Education Bureau had, in response, provided grants to several local schools to develop programmes to assist students who don't speak Chinese.⁷

The website of the Constitutional Mainland Affairs Bureau of Hong Kong states that it provides "a wealth of services specially catered for new arrivals in Hong Kong" and publishes information about these services in a number of languages, including English. The website itself provides links to information provided by different government departments including general information for new arrivals, registering for an identity card, housing, employment, health services and social services.⁸

Other sources generally indicate that Hong Kong is considered a desirable place to return to or migrate to. An article dated 28 June 2007 from *Channel NewsAsia* reported that, in the previous decade, the HKSAR had welcomed some 275,000 returnees. According to the article:

Since Britain returned Hong Kong to China a decade ago, the city has welcomed back some 275,000 Hongkongers who emigrated – that's some 4% of the local population.

...

While Hongkongers are slowly trickling home, British citizens have left in droves, replaced by upwardly mobile ethnic Chinese and South Asians from across Asia.⁶

The article reports that there is a three-year waiting period for mainlanders seeking to reunite with relatives in Hong Kong, and notes that, amongst those who have made the move, "many go through a tough period of adjustment. Living quarters in the crowded city are often cramped, and low-skilled jobs are scarce".⁹

Amongst the sources consulted, no information was found to indicate that returnees were subject to adverse treatment by the authorities or that protection was withheld from returnees.

List of Sources Consulted

Internet Sources:

Government Information & Reports

Embassy of the Republic of Indonesia, Canberra <http://www.kbri-canberra.org.au/>

Government of Hong Kong website <http://www.gov.hk/en>

UK Home Office <http://www.homeoffice.gov.uk/>

US Department of State <http://www.state.gov/>

United Nations (UN)

UN High Commissioner for Refugees (UNHCR) Refworld

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>

Non-Government Organisations

Amnesty International website <http://www.amnesty.org>

Human Rights Watch website <http://www.hrw.org>

International News & Politics

BBC News <http://news.bbc.co.uk>

⁷ Furniss, T. 2008, 'Affordable alternative – Government bureau helps out non-Chinese-speaking students who are turning to the lower-cost local curriculum', *South China Morning Post*, 15 November – Attachment 7.

⁸ 'Settling in Hong Kong' (undated), Government of Hong Kong website <http://www.gov.hk/en/nonresidents/living/settling.htm> – Accessed 2 February 2010 – Attachment 8.

⁹ 'Pre-'97 returnees to Hong Kong find city more vibrant after 10 years' 2007, *Channel NewsAsia*, 28 June. (FACTIVA)

South China Morning Post <http://www.scmp.com>

Search Engines

Copernic <http://www.copernic.com/>

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

MRT-RRT Library Catalogue

Attachments

1. *Act No. 3 of 10 April 1946 Concerning Citizens and Residents of Indonesia* 1946. (CISNET Indonesia CX4397)
2. *Law No. 62 of 1958, Law on the Citizenship of the Republic of Indonesia* 1958, UNHCR website <http://www.unhcr.org/refworld/docid/3ae6b4ec8.html> – Accessed 22 January 2010.
3. *Law of the Republic of Indonesia No. 12 on Citizenship of the Republic of Indonesia* 2006, UNHCR website, 1 August <http://www.unhcr.org/refworld/docid/4538aae64.html> – Accessed 22 January 2010.
4. ‘Temporary Stay Visa (VITAS)’ (undated), Embassy of Indonesia in Canberra website http://www.kbri-canberra.org.au/consular/visa/visa_temp.htm – Accessed 22 January 2010.
5. US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – China*, February.
6. ‘Hong Kong – the Facts’ (undated), Government of Hong Kong website <http://www.gov.hk/en/about/abouthk/facts.htm> – Accessed 1 February 2010.
7. Furniss, T. 2008, ‘Affordable alternative – Government bureau helps out non-Chinese-speaking students who are turning to the lower-cost local curriculum’, *South China Morning Post*, 15 November. (FACTIVA)
8. ‘Settling in Hong Kong’ (undated), Government of Hong Kong website <http://www.gov.hk/en/nonresidents/living/settling.htm> – Accessed 2 February 2010.
9. ‘Pre-’97 returnees to Hong Kong find city more vibrant after 10 years’ 2007, *Channel NewsAsia*, 28 June. (FACTIVA)