

## Refugee Review Tribunal

### AUSTRALIA

#### RRT RESEARCH RESPONSE

**Research Response Number:** CHN30196  
**Country:** China  
**Date:** 30 May 2006

Keywords: CHN30196 – China – Macao – Right of Return – Internal Relocation

This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

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#### ***Background***

*The applicant was born in China. The applicant was granted permanent residency by Macau. The applicant's eldest son was born in Macau. They applied for resolution of status. They were issued Chinese passports by the Chinese consulate in Sydney. The applicant's second son was born in Sydney. The applicant claims that she and her sons are unable to return to Macau.*

#### **Questions**

- 1. Can the applicant and her sons return to live in Macau?**
- 2. If not, where can they return to in China?**

#### **List of Sources Consulted**

##### Internet Sources:

##### **Topic Specific Links**

International Organization for Migration <http://www.iom.int/>

Reliefweb <http://www.reliefweb.int/rw/dbc.nsf/doc100?OpenForm>

##### **Search Engines**

Google search engine <http://www.google.com.au/>

##### Databases:

FACTIVA (news database)

BACIS (DIMA Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

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

RRT Library Catalogue

## RESPONSE

### 1. Can the applicant and her sons return to live in Macau?

#### Macau permanent residents returning to Macau

According to a recent US State Department report the Basic Law of the Macao Special Administrative Region of the People's Republic of China guarantees the right of permanent residents to leave and enter Macau (the Basic Law took effect on 20 December 1999). However, the Basic Law restrictively defines "permanent residents" for Chinese citizens (US Department of State 2006, 'Macau: Freedom of Movement within the Country, Foreign Travel, Emigration, and Repatriation' in *Country Reports on Human Rights Practices for 2005 – China (includes Tibet, Hong Kong, and Macau)*, 8 March – Attachment 1); *The Far East and Australasia 2004* 2004, Europa Publications, 35<sup>th</sup> ed, London, p.280 – Attachment 2; 'Decree of the President of the People's Republic of China No. 3: Basic Law of the Macao Special Administrative Region of the People's Republic of China' 1993, University of Macau website, 31 March, **Article 24 (2)** <http://www.umac.mo/basiclaw/english/main.html> – Accessed 9 June 1999 – Attachment 3).

The Basic Law's definition of "permanent residents" includes the following:

(2) Chinese citizens who have ordinarily resided in Macao for a continuous period of not less than seven years before or after the establishment of the Macao Special Administrative Region and their children of Chinese nationality born outside Macao after they have become permanent residents ('Decree of the President of the People's Republic of China No. 3: Basic Law of the Macao Special Administrative Region of the People's Republic of China' 1993, University of Macau website, 31 March, Article 24 (2) <http://www.umac.mo/basiclaw/english/main.html> – Accessed 9 June 1999 – Attachment 3).

The Basic Law notes that these permanent residents:

...shall have the right of abode in the Macao Special Administrative Region and shall be qualified to obtain permanent identity cards ('Decree of the President of the People's Republic of China No. 3: Basic Law of the Macao Special Administrative Region of the People's Republic of China, 1993, University of Macau website, 31 March, Article 24 <http://www.umac.mo/basiclaw/english/main.html> – Accessed 9 June 1999 – Attachment 3).

Information accessed from the Chinese Ministry of Foreign Affairs website notes that Macao SAR passports are issued to Chinese citizens who are permanent residents of the Macao SAR ('Chinese Passports and Other Travel Documents' 2000, Ministry of Foreign Affairs of the People's Republic of China website <http://www.fmprc.gov.cn/eng/28947.html> – Accessed 4 September 2002 – Attachment 4; 'Decree of the President of the People's Republic of China No. 3: Basic Law of the Macao Special Administrative Region of the People's Republic of China' 1993, University of Macau website, 31 March, Article 139 <http://www.umac.mo/basiclaw/english/main.html> – Accessed 9 June 1999 – Attachment 3).

On non-permanent residents the Basic Law states:

The non-permanent residents of the Macao Special Administrative Region shall be persons who are qualified to obtain Macao identity cards in accordance with the laws of the Region but have no right of abode ('Decree of the President of the People's

Republic of China No. 3: Basic Law of the Macao Special Administrative Region of the People's Republic of China' 1993, University of Macau website, 31 March, Article 24 <http://www.umac.mo/basiclaw/english/main.html> – Accessed 9 June 1999 – Attachment 3).

## **Chinese citizens going to Macau**

The Basic Law states that the Chinese must obtain approval for entry into the Macau SAR from China:

For entry into the Macao Special Administrative Region, people from other provinces, autonomous regions or municipalities directly under the Central Government must apply for approval. Among them, the number of persons who enter the Region for the purpose of settlement shall be determined by the competent authorities of the Central reopen (sic) Region. The Macao Special Administrative Region may establish an office in Beijing ('Decree of the President of the People's Republic of China No. 3: Basic Law of the Macao Special Administrative Region of the People's Republic of China' 1993, University of Macau website, 31 March, Article 22 <http://www.umac.mo/basiclaw/english/main.html> – Accessed 9 June 1999 – Attachment 3).

Since July 2003 independent travel restrictions from China to Macau have eased. An April 2006 article noted that mainland residents can apply to go to Macau for purposes such as attending a funeral, pursuing studies or for employment (Australian Consulate-General Guangzhou 2003, *Implications of easing of travel restrictions, Guangdong Province to Hong Kong and Macao*, 8 October – Attachment 5; 'Travel to SARs made easier' 2006, *Industry Updates*, 11 April – Attachment 6; 'More Chinese cities allow individual travelers (sic) to HK, Macao' 2006, *Asia Pulse*, 2 May – Attachment 7).

Two 2006 *Xinhua News Agency* news articles reported the detaining of illegal mainland workers in Macau. The articles stated that the employment of illegal workers incur large fines and imprisonment for repeat offenders. Workers employed illegally are customarily ordered to leave Macau ('38 illegal laborers seized in Macao' 2006, *Xinhua News Agency*, 21 March – Attachment 8; '7 illegal laborers detained in Macao' 2006, *Xinhua News Agency*, 22 May – Attachment 9).

In the context of international air travel the Travel Information Manual, published by the International Air Transport Association (IATA), writes that Chinese nationals require visas to enter Macao except for a stay of a maximum 30 days (*TIM: Travel Information Manual* 2005, IATA Netherlands Data Publications, Badhoevedorp, November, p.278 – Attachment 10).

## **2. If not, where can they return to in China?**

Information in the sources consulted did not identify any specific locations to which a person must return to in China. The traditional system of restricting internal migration in China is household registration (*hukou*) and residency permits. However, sources indicate that movement of Chinese to reside and work is widespread and the conditions to do so have improved (Glain, Stephen 2005, 'China Is On The Move; Of all the threats to its economic boom, Beijing officially encourages one, mass internal migration. It's a very smart choice', *Newsweek International*, 12 December – Attachment 11; Manthorpe, Jonathan 2005, 'Migration in China spawns urban class of poor outsiders', *Vancouver Sun*, 7 November – Attachment 12).

## Returnees

In January 2003 DFAT advised on the return of people who had applied for refugee status as follows:

A. Applying for refugee status abroad in itself does not necessarily expose an applicant to persecution on return. The authorities might monitor the movements of such an applicant (if aware of the applicant's return and application status), but ongoing interest would largely depend on the applicant's subsequent behaviour on return (ie. whether the applicant engaged in illegal activities). In some circumstances, public security officials might initiate discussions with a returnee to obtain information on past associations and activities (DFAT 2003, *DFAT Report No.00221 – China: RRT Information Request: CHN14995*, 13 January – Attachment 13).

## Household registration (*hukou*)

According to information accessed from the US embassy in China website, *hukous* are issued for all Chinese and identify the carrier as a rural or non-rural (urban) resident. Each urban administrative entity (towns, cities etc.) issues its own *hukou*, which entitles only registered inhabitants of that entity full access to social services e.g. education. Reforms to the system have begun to redress the rural and urban division. The reforms enable rural migrants with stable employment and fixed residences to register as urban residents to obtain social services. *Hukou* reforms differ among the areas involved – although they roughly set the same qualifications for entitlement to urban registration. Basically, a person and his/her immediate family members can obtain urban *hukous* if s/he has a fixed residence and stable work in an urban area, usually defined as more than one year in a job (US Embassy in China (undated), 'Hukou Reform Targets Urban-Rural Divide', American Embassy in China website <http://www.usembassy-china.org.cn/econ/ptr/hukou.html> – Accessed 26 May 2006 – Attachment 14).

In respect of movement, foreign travel, emigration and repatriation the US State Department wrote in its country reports on human rights for the year 2005 (researcher's emphasis in bold type):

The law provides for some of these rights, although the government generally did not respect them in practice. **Although the government maintained restrictions on the freedom to change one's workplace or residence, the national household registration system continued to erode, and the ability of most citizens to move within the country to work and live continued to expand. However, the government retained the ability to restrict freedom of movement through other mechanisms.** Authorities heightened restrictions periodically, particularly curtailing the movement of individuals deemed politically sensitive before key anniversaries and visits of foreign dignitaries and to forestall demonstrations (US Department of State 2006, 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' in *Country Reports on Human Rights Practices for 2005 – China*, 8 March – Attachment 15);

and:

The system of national household registration (*hukou*) underwent further change during the year [2005], as the country accumulated a more mobile labor force. **Rural residents continued to flock to the cities, where the per capita disposable income was more than triple the rural per capita cash income. Nonetheless, many could**

**not officially change their residence or workplace within the country. Government and work unit permission were often required before moving to a new city.** Most cities had annual quotas for the number of new temporary residence permits that would be issued, and all workers, including university graduates, had to compete for a limited number of such permits. It was particularly difficult for peasants from rural areas to obtain household registration in economically more developed urban areas. **There remained a floating population of between 100 and 150 million economic migrants who lacked official residence status in cities. Without official residence status, it was difficult or impossible to gain full access to social services, including education.** Furthermore, law and society generally limited migrant workers to types of work considered least desirable by local residents, and such workers had little recourse when subjected to abuse by employers and officials. In some major cities, access to education for children of migrant workers continued to improve, and some cities offered migrants other social services free of charge. Many cities and provinces continued experiments aimed at abolishing the distinction between urban and rural residents in household registration documents (US Department of State 2006, 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' in *Country Reports on Human Rights Practices for 2005 – China*, 8 March – Attachment 15).

Sources referring to relocation are cited by the Immigration and Refugee Board of Canada in the following terms:

Permanent relocation outside of the *hukou* zone can be approved by authorities in cases of new employment, post-secondary school enrolment, family reunification, or the "recategorization of rural residents as urban residents" (Wang 2005, 70). Major urban centres such as Shanghai, Beijing and the special economic zones are "highly controlled cities" that retain local *hukou* quotas (ibid., 92). According to the professor of international affairs, outside of the larger cities, receiving approval for permanent relocation is "relatively easy" (30 Apr. 2005). In general, there are greater possibilities of migration for the wealthy, the educated, and those who obtain state employment or are retired or demobilized military officers (Wang 2005, 91-94) (Immigration and Refugee Board of Canada 2005, *CHN43520.E – China: The possibility for an adult male returning from overseas, who was abused as a child by his father in China, to relocate to a new residence of his own and obtain a new hukou, or to move to another city to start working, if his father objects to either move (2003-2005)*, 2 May – Attachment 16).

Zhao Jian writing in the International Organization for Migration's (IOM) *World Migration 2005* states that:

China has a surplus labour force, both in rural areas and in the cities. With continuing urbanization, more and more rural labourers are moving into the cities. In 2003, some 121 million people were migrating internally and stayed out of their household-registered places for over six months... (Jian, Zhao, 'Migration in the People's Republic of China' in International Organization for Migration (IOM) 2005, *World Migration 2005*, Section 1, p.127 pp.125-128 [http://www.iom.int/DOCUMENTS/PUBLICATION/wmr\\_sec01.pdf](http://www.iom.int/DOCUMENTS/PUBLICATION/wmr_sec01.pdf) – Accessed 25 May 2006 – Attachment 17).

Under an experimental programme, local governments in 11 provinces are supposed to allow rural residents to register as urban residents so as to receive the same social benefits. The provinces include Liaoning, Shandong, Fujian and Guangdong ('Financial Express: Liberal China to ease hukou rigidity' 2005, *Financial Express*, 18 November – Attachment 18;

Caixiong, Zheng, Yong, Wu and another 2005, 'Rural dwellers to be granted urban rights', *China Daily (Hong Kong edition)*, 2 November [http://www.chinadaily.com.cn/english/doc/2005-11/02/content\\_489798.htm](http://www.chinadaily.com.cn/english/doc/2005-11/02/content_489798.htm) – Accessed 26 May 2006 – Attachment 19; Luard, Tim 2005, 'China rethinks peasant 'apartheid'', *BBC News*, 10 November <http://news.bbc.co.uk/2/hi/asia-pacific/4424944.stm> – Accessed 26 May 2006 – Attachment 20).

The November 2005 *Financial Express* article notes that the efficacy of the hukou system in controlling internal migration has been diminishing. It states that:

...Hukou reform till date has thus been limited to smaller cities and towns where peasants are now allowed to apply for resident permits. But even in cities with liberal hukou rules, the basic requirements for obtaining an urban hukou are fixed housing and stable employment. In big cities restrictions are much more stringent. Migrants are usually only allowed to live in certain demarcated parts of town and work in specified occupations which tend to be dangerous or dirty...('Financial Express: Liberal China to ease hukou rigidity' 2005, *Financial Express*, 18 November – Attachment 18).

*BBC Monitoring Asia Pacific* reported that a draft amendment to the Chinese education law included the provision that reads:

...school-age children, whose parents or other legal guardians **go to work and dwell in places other than their household registration sites**, are entitled to receive education at the places where their parents and guardians work and dwell in. Local governments should ensure that children of migrant workers enjoy equal conditions for compulsory education ('China revises law to ensure education for children of migrant workers' 2006, *BBC Monitoring Asia Pacific*, source: Xinhua news agency, 3 May – Attachment 21).

Also, Luard writing for *BBC News* states that in the past rural dwellers were discriminated against and possibly arrested for moving to the cities – most worked in construction or other low-paid industries. These people, however, no longer face arrest simply for being there, due to a change in the law after the death of a university-educated migrant in Guangdong in 2003 Luard, Tim 2005, 'China rethinks peasant 'apartheid'', *BBC News*, 10 November <http://news.bbc.co.uk/2/hi/asia-pacific/4424944.stm> – Accessed 26 May 2006 – Attachment 20).

A February 2005 Issue Paper provides an overview of the household registration system. The paper also refers to reforms in Guangdong:

Although the province of Guangdong had enacted, as early as April 2002, a ban on the detention of undocumented migrants who had regular jobs and fixed homes (Solinger 20 Oct. 2004; Chan, Anita 9 Dec. 2004), the March 2003 incident involving the death of Sun Zhigang has resulted in additional reforms being undertaken at the provincial level (Chen 12-13 Dec. 2003). In March 2004, it was reported that the province of Guangdong was taking measures to protect the legal rights of its 23 million migrant workers and their families, including the rights to education and medical insurance (Business Daily Update 11 Mar. 2004). These measures included setting up offices across the province, at the provincial and local levels, to offer better services to migrants (ibid.)...(Immigration and Refugee Board of Canada 2005, '5.3 The Case of Guangdong' in *China: Reforms of the Household Registration System (Hukou) (1998-2004)*, February – Attachment 22).

## Resident Identity Cards

DFAT has provided information on the issue of Resident Identity Cards for Chinese returning from overseas. DFAT advised in June 2005:

A. The Ministry of Public Security amended regulations relating to Resident Identity Cards on 7 August 2003 (see <http://news.sina.com.cn/c/2003-08-07/12081497604.shtml> (Chinese only)). The amendments abolished the requirement that Chinese citizens who reside overseas for more than one year must have their household registrations nullified except for those who permanently reside overseas. Those who permanently reside overseas must have their household registrations nullified and must surrender their Chinese Resident Identity Cards to their local public security authorities.

**B. The only form of identification required by a Chinese national who has surrendered his/her Resident Identity Card is his/her Chinese passport.** If required by Chinese authorities to prove their identity, their Chinese passport would suffice. If a Chinese national who had surrendered his/her Resident Identity Card returned to reside temporarily in the province in which the passport was originally issued, he/she would not need any other temporary resident documents except the Chinese passport. **If he/she returned to China to live in a province other than the one in which the passport was originally issued, he/she might need to apply for a temporary resident document depending on the requirements of the local public security authorities.**

C. If a Chinese national who had surrendered his/her Resident Identity Card **wanted to return to China to live permanently**, he/she would be required to relinquish the permanent residency of the other country. **The person would then have to apply to the local public security authorities where his/her household registration was originally nullified to reclaim his/her Resident Identity Card.** The local public security authorities would require at least two documents to reissue a nullified Resident Identity Card: an official document indicating the third country permanent residency has been abandoned; and the person's Chinese passport (Department of Foreign Affairs and Trade (DFAT) 2005, *DFAT Report No. 384 – MRT Information Request: CHN17349*, 21 June – Attachment 23).

A Canadian government organisation has provided information on a new law on Resident Identification Cards (RICs), effective from 1 January 2004. Although the former regulations were repealed, RICs issued under those regulations will remain valid until their expiry date (Immigration and Refugee Board of Canada 2005, *CHN43360.E – China: National Resident Identity Cards; background information; description; issuance procedures*, 24 February <http://www.irb-cisr.gc.ca/en/research/ndp/ref/?action=view&doc=chn43360e> – Accessed 25 May 2005 – Attachment 24).

## List of Attachments

1. US Department of State 2006, 'Macau: Freedom of Movement within the Country, Foreign Travel, Emigration, and Repatriation' in *Country Reports on Human Rights Practices for 2005 – China (includes Tibet, Hong Kong, and Macau)*, 8 March
2. *The Far East and Australasia 2004* 2004, Europa Publications, 35<sup>th</sup> ed, London, p.280 (RRT Library)
3. 'Decree of the President of the People's Republic of China No. 3: Basic Law of the Macao Special Administrative Region of the People's Republic of China' 1993, University of Macau website, 31 March (<http://www.umac.mo/basiclaw/english/main.html> – Accessed 9 June 1999)
4. 'Chinese Passports and Other Travel Documents' 2000, Ministry of Foreign Affairs of the People's Republic of China website (<http://www.fmprc.gov.cn/eng/28947.html> – Accessed 4 September 2002)
5. Australian Consulate-General Guangzhou 2003, *Implications of easing of travel restrictions, Guangdong Province to Hong Kong and Macao*, 8 October (CISNET China CX85605)
6. 'Travel to SARs made easier' 2006, *Industry Updates*, 11 April (FACTIVA)
7. 'More Chinese cities allow individual travelers (sic) to HK, Macao' 2006, *Asia Pulse*, 2 May (FACTIVA)
8. '38 illegal laborers seized in Macao' 2006, *Xinhua News Agency*, 21 March (FACTIVA)
9. '7 illegal laborers detained in Macao' 2006, *Xinhua News Agency*, 22 May (FACTIVA)
10. *TIM: Travel Information Manual* 2005, IATA Netherlands Data Publications, Badhoevedorp, November, p.278 (RRT Library)
11. Glain, Stephen 2005, 'China Is On The Move; Of all the threats to its economic boom, Beijing officially encourages one, mass internal migration. It's a very smart choice', *Newsweek International*, 12 December (FACTIVA)
12. Manthorpe, Jonathan 2005, 'Migration in China spawns urban class of poor outsiders', *Vancouver Sun*, 7 November (FACTIVA)
13. DFAT 2003, *DFAT Report No.00221 – China: RRT Information Request: CHN14995*, 13 January
14. US Embassy in China (undated), 'Hukou Reform Targets Urban-Rural Divide', American Embassy in China website (<http://www.usembassy-china.org.cn/econ/ptr/hukou.html> – Accessed 26 May 2006)



15. US Department of State 2006, 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' in *Country Reports on Human Rights Practices for 2005 – China*, 8 March
16. Immigration and Refugee Board of Canada 2005, *CHN43520.E – China: The possibility for an adult male returning from overseas, who was abused as a child by his father in China, to relocate to a new residence of his own and obtain a new hukou, or to move to another city to start working, if his father objects to either move (2003-2005)*, 2 May (REFINFO)
17. Jian, Zhao, 'Migration in the People's Republic of China' in International Organization for Migration (IOM) 2005, *World Migration 2005*, Section 1, pp.125-128 ([http://www.iom.int/DOCUMENTS/PUBLICATION/wmr\\_sec01.pdf](http://www.iom.int/DOCUMENTS/PUBLICATION/wmr_sec01.pdf) – Accessed 25 May 2006)
18. 'Financial Express: Liberal China to ease hukou rigidity' 2005, *Financial Express*, 18 November (FACTIVA)
19. Caixiong, Zheng, Yong, Wu and another 2005, 'Rural dwellers to be granted urban rights', *China Daily (Hong Kong edition)*, 2 November ([http://www.chinadaily.com.cn/english/doc/2005-11/02/content\\_489798.htm](http://www.chinadaily.com.cn/english/doc/2005-11/02/content_489798.htm) – Accessed 26 May 2006)
20. Luard, Tim 2005, 'China rethinks peasant 'apartheid'', *BBC News*, 10 November (<http://news.bbc.co.uk/2/hi/asia-pacific/4424944.stm> – Accessed 26 May 2006)
21. 'China revises law to ensure education for children of migrant workers' 2006, *BBC Monitoring Asia Pacific*, source: Xinhua news agency, 3 May (FACTIVA)
22. Immigration and Refugee Board of Canada 2005, *China: Reforms of the Household Registration System (Hukou) (1998-2004)*, February (REFQUEST)
23. Department of Foreign Affairs and Trade (DFAT) 2005, *DFAT Report No. 384 – MRT Information Request: CHN17349*, 21 June
24. Immigration and Refugee Board of Canada 2005, *CHN43360.E – China: National Resident Identity Cards; background information; description; issuance procedures*, 24 February (<http://www.irb-cisr.gc.ca/en/research/ndp/ref/?action=view&doc=chn43360e> – Accessed 25 May 2005)