

主旨:

Views on the One Way Permit Scheme as part of Hong Kong's Population Policy

Dear Sir/Madam,

1 There is no doubt that people from Mainland China settling in Hong Kong through the One Way Permit ("OWP") Scheme play an extremely important role towards Hong Kong's population structure and it is extremely important that our population policy consultation must not omit a thorough study on the OWP Scheme. No doubt this has caused widespread public concern since the Court of Final Appeal's decision in the Kong Yunning case concerning entitlement of new arrivals to Comprehensive Social Security Assistance - some of the concern I consider to be, with respect, misconceived. However, I believe it is indeed very important to review and consider how the OWP Scheme could be improved in order to ensure it works to the benefit of Hong Kong's population.

2 My straightforward and simple point in approaching this topic is that, we should strictly follow what is written in the Basic Law. There are a few points:

(a) The Basic Law says that whoever from Mainland China wishing to come to Hong Kong from Mainland China, he or she must apply for approval. The 1999 Interpretation provides that these people must apply through the Mainland authorities.

(b) The number of people coming from Mainland China to Hong Kong should be decided after consultation with Hong Kong. The 150 quota is not an invariable number and not set in stone in the Basic Law.

(c) What is notable is that the Basic Law and the 1999 Interpretation didn't go so far to say that Hong Kong has no right to approve / scrutinise the people applying to settle in Hong Kong from Mainland China. Article 22(4) only provides a generic word "approval" without specifically specifying that this to be "Mainland approval". Neither does the 1999 Interpretation rule out the possibility of Hong Kong exercising its own approval in addition to the approvals imposed in the Mainland.

(d) In addition, as one very important safeguard, Basic Law Article 154 provides that Hong Kong shall have power of immigration control.

(e) The Basic Law only grants children born in Hong Kong, or children born of Hong Kong permanent residents, the right of abode in Hong Kong. The Basic Law does NOT grant any right of abode to, for example, spouses of Hong Kong permanent residents, or parents of Hong Kong permanent residents.

(f) Family reunion is merely a policy matter. It is not an express basic right enshrined under the Basic Law.

3 As to the rationale of having Mainland approval for OWPs (rather than entirely Hong Kong approval - as some people now persistently ask for), I believe one must not forget that, if I understand it correctly, one of the reasons for having the Mainland to approve the OWP applications is to avoid any sudden influx of illegal immigrants from the Mainland, particularly following the Court of Final Appeal's decision in the Ng Ka Ling case. The clarification made in the 1999 Interpretation in relation to Mainland approval mechanism was merely intended to save Hong Kong from all the trouble with dealing these OWP applications, and certainly was not intended to stifle the immigration and border control power of the Hong Kong immigration.

4 Therefore, my view on Hong Kong "resuming" the OWP approval authority is as follows :

(a) It would not be wise for Hong Kong to ask for "resuming" the approval power for the OWP Scheme, if it is to mean that the people need not go through Mainland authorities to apply for his/her One Way Permit. It is because doing so will likely cause a huge influx of illegal immigrants from Mainland China to apply for stay in Hong Kong during their application for One Way Permit. That is the most uncontrolled scenario and cannot be acceptable.

(b) If the question of concern is whether the applicants are genuinely entitled to One Way Permit, there really is nothing to stop the Hong Kong Government from investigating and scrutinising One Way Permit holders more strictly before these applicants are allowed to enter Hong Kong in accordance with their OWPs (e.g. to unveil any fake marriages,

etc.). I think the Hong Kong Government should definitely look into whether or not anything more could be done in this aspect in order to alleviate the concern of Hong Kong people

5 In terms of the quota for OWP Scheme, that really must be appropriately reviewed in light of the actual circumstances of Hong Kong, and the same be reflected to the Central Government in accordance with Article 22. I consider that:

(a) Family reunion is one thing. Whether Hong Kong's infrastructure can accommodate the many OWP applicants to Hong Kong, particularly to enable these people to live a decent life, is another thing. I consider the latter must take priority over the former. The Government should not by fostering family reunion on the one hand, create social problems on the other hand.

(b) The rate of 150 per day is enormous. It is equivalent to nearly 55,000 people per year. I learned that the number is similar to the rate of influx of illegal immigrants in the late 70s and early 80s. Or they are taking up all fields of our Victoria Park every year. That is a very serious number and must not be taken lightly.

(c) No doubt Hong Kong is facing serious shortages of housing at least in the short run. It is clear that currently Hong Kong does not even have enough housing to accommodate the need of those who are already in Hong Kong, and most people coming under the OWP scheme are living in extremely poor conditions.

(d) It would be also very clear to the Government that a lot of these people are poor and of low education. The figures say everything : para 2.12 of the Population Policy Consultation Document provides that 86% had secondary education (meaning close to 14% had merely primary education), 48% were economically active (meaning close to 52% were not working at all), and 87% were engaged in low-skilled jobs. Clearly they need the Government's support on various aspects of welfare, housing and medical care. They are very different from those entering say, through the Expertise Scheme or the Capital Scheme, or those

who are coming to study in universities. It is natural for Hong Kong people to feel uneasy because it does seem that admitting the OWPs will be really burdensome to Hong Kong's social welfare, public education and public medical system.

(e) However, as the figures show, the new arrivals are taking up low skilled work which are in dire need of people. These people do contribute to Hong Kong to that important extent.

(f) From the figures, it clearly is important to study the reasons as to why as many as 52% of the new arrivals are not economically active in Hong Kong. True that they may need to take care of their children, but I am extremely skeptical about this. The truth most probably is because these people are not really reporting their economic activities for fear that what they reportedly earn might cause them to lose their public welfare or public housing entitlements. That I believe is something needs to be dealt with urgently - investigate for concealed assets and false reporting cases for social welfare and public housing applications.

6 As to the particular allocation of the OWP quota I do have concern as well. According to my understanding, among the quota of 150 people per day,

(a) 60 of them are allocated to children born in Mainland China to Hong Kong residents holding Certificate of Entitlement to Right of Abode (i.e. those entitled to right of abode under Article 22 of the Basic Law)

(b) 30 are allocated to the Mainland Chinese spouses of the Hong Kong permanent residents who are separated for more than 10 years, and their accompanying children.

(c) The remaining 60 are allocated to the following categories of people :

(1) Mainland Chinese spouses of the Hong Kong permanent residents who are separated for less than 10 years, and their accompany children.

(2) he/she is aged above 18 and under 60 and need to come to Hong Kong to take care of his/her parents settled in Hong Kong

both of who are aged above 60 and have no children in Hong Kong.

(3) he/she is aged above 60 and has no children in the Mainland, and has to depend on his/her children aged above 18 settled in Hong Kong.

(4) he/she is aged under 18 and has to depend on his/her parents settled in Hong Kong.

(5) other special circumstances which require settlement in Hong Kong (e.g. he/she is aged above 60 and has no children in the Mainland, and has to depend on his/her relative settled in Hong Kong).

7 I suggest that while 6(a) is generally not controversial, the "other categories" under paragraph 6(c)(1) to 6(c)(6) above are most problematic. There are the following points:

(a) None of these categories are entitled to any right of abode in Hong Kong under the Basic Law. They cannot come to Hong Kong as of right. Naturally it is wrong to include them in the OWP scheme.

(b) Mainland China being more and more affluent society, it is not necessarily that these categories of people invariably need to come to Hong Kong to settle in order that this "family reunion" right can be fostered. In a lot of cases, family reunion can simply be achieved by having the relevant parent or children to move to the Mainland to take care of his/her family member.

(c) Particularly the category at paragraph 6(c)(2) above looks to me to be hilarious. Now that the Hong Kong Government encourages Hong Kong people to settle in Guangdong for their retirement life, the question is, why is the Government at the same time encouraging Mainland Chinese people to come to Hong Kong to take care of their elderly, if it would have been much easier for the Hong Kong elderly to move to the Mainland to join their children and these Hong Kong elderly can still enjoy the Hong Kong subsidy that they are entitled to?

(d) Category at paragraph 6(c)(3) is even more strange. There is clearly no any reason for inviting Mainland Chinese elderly people to come to Hong Kong to enjoy their retirement life, if it is clear to the Government that Hong Kong is already in serious shortages in elderly facilities and is facing extremely huge burden in public welfare and medical services for the elderly. Essentially, family reunion should not be achieved at the expense of public money. It would be unwise to the extreme for the Hong Kong Government to seek to import elderly

people from the Mainland if the Hong Kong Government is at pains in dealing with the ageing population of the local community.

8 Accordingly, my suggestions are as follows:

(a) As explained above at paragraph 2, there is really nothing in the Basic Law which stops the Hong Kong Government from imposing additional approval procedures in addition to the procedures imposed by the Mainland authorities.

(b) The Hong Kong Government should also liaise with the Mainland authorities to ask for clarification or amendment of any of the criteria for the OWP Scheme to ensure the OWP Scheme is a scheme which works to Hong Kong's benefit.

(c) A means test should be introduced (either in the Mainland or in Hong Kong) upon any applicants applying in the OWP Scheme under paragraph 6(b) and 6(c) above, because these categories are not categories to which the Basic Law gives right of abode. They are granted One Way Permits as a matter of policy only - namely, to foster "family reunion". Policy can change in accordance with social circumstances.

(d) "Family reunion" is not any kind of core human rights recognised internationally or under the Basic Law. The Hong Kong Government need not foster family reunion for the sake of it.

(e) If people coming under these categories cannot show they have sufficient means to support their lives in Hong Kong, it is impossible that these people are going to be able to properly enjoy "family reunion", or alternatively, they are only going to be possible to have family reunion if they would get the social welfare and medical support from the Hong Kong Government. That is seriously incorrect policy. It is impossible for public resources to be drawn to matters which are entirely private and irrelevant to any core human rights.

(f) There are also many other ways that any request for "family reunion" may be fulfilled, for example, by the use of Two-Way Permits instead of One-Way Permits. There is no reason why, e.g. Two-Way Permits are not effective ways to ensure these categories of people

can reunion with their family if these people simply could not show that they are financially capable to support their life in Hong Kong.

Thank you for considering my opinion above.

Yours faithfully,

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