

BRITISH NATIONALITY (HONG KONG) ACT 1997 - EVIDENCE TO BE SUPPLIED

1. Permanent Identity Card

1.1 All applicants should be required to produce photocopies of their Hong Kong Permanent Identity Cards (PICs) (see Annex E). The PIC serves a number of useful functions:

- It establishes the applicant's identity
- It indicates the probability of Chinese citizenship
- Where the applicant is applying in Hong Kong (or has gone or might go there after applying elsewhere), the unique card number enables the British Consulate General there to make database checks on the acquisition of British nationality

2. Evidence of British nationality

2.1 In most cases, production of the applicant's passport or certificate of registration or naturalisation will be sufficient to confirm that an applicant held British nationality at the relevant time, although, in some cases, further investigation will be needed. Applications should be supported by evidence of the applicant's citizenship or status as outlined in paragraphs 2.2-2.6 below. For more detailed guidance on how to determine whether an applicant has/had an automatic claim to a form of British nationality, see **Chapters 22-25** (for British overseas territories citizenship), **Chapters 37-38** (for British Overseas citizenship), **Chapters 43-44** (for British subject status), and **Chapter 54** (for British protected person status).

2.2 Former Hong Kong BDTs who are now BOCs

2.2.1 Applicants who were Hong Kong BDTCs and became British Overseas citizens under the **Hong Kong (British Nationality) Order 1986** should be asked to produce the following documentation:

- a passport describing the holder as a British Dependent Territories citizen by virtue of a connection with Hong Kong; or
- a birth certificate showing parents' details and birth in Hong Kong before 1 January 1983; or
- a birth certificate showing parents' details, birth in Hong Kong on or after 1 January 1983, and showing the word "Established" in column 12; or
- a certificate of registration or naturalisation issued by the Governor of Hong Kong describing the holder as a British Dependent Territories citizen; or
- the relevant documents related to parent's, grandparent's, spouse's etc birth, adoption, marriage, death, registration, or naturalisation which otherwise establish a claim to British Dependent Territories citizenship by connection with Hong Kong

2.2.2 It is not normally necessary for applicants to produce evidence that they did not also hold British Dependent Territories citizenship by connection with some other British overseas territory. However, if it appears that this could be the case because, for example the applicant, a parent or grandparent was born in a British overseas territory other than Hong Kong, this should be investigated.

2.3 British Nationals (Overseas)

2.3.1 A claim to be a British National (Overseas) should be supported by a passport describing the holder as a British National (Overseas).

2.3.2 In order to be registered as a British National (Overseas), the registration authority must have been satisfied that the person was a British Dependent Territories citizen by virtue only of a connection with Hong Kong. It is not therefore necessary, if an applicant is a British National (Overseas), to investigate how the person came to be a British Dependent Territories citizen.

2.4 British Overseas citizens

2.4.1 Applicants who became British Overseas citizens without first having been British Dependent Territories citizens should be asked to produce:

- a passport describing the holder as a British Overseas citizen; or
- a certificate of registration describing the holder as a British Overseas citizen; or
- a certificate of registration granted outside the United Kingdom and the dependent territories describing the holder as a citizen of the United Kingdom and Colonies, and which did not give the holder the right of abode in the United Kingdom under **s.2(1)(a)**, read with **s.2(4)**, of the **Immigration Act 1971**, as originally enacted; or
- relevant documents related to parents, grandparents, spouse etc, similar to those required to establish British Dependent Territories citizenship, but which establish that the applicant

was a citizen of the United Kingdom and Colonies who did not, on 1 January 1983, become either a British citizen or a British Dependent Territories citizen

2.5 British subjects

2.5.1 A claim to British subject status should be supported by:

- a passport issued on or after 1 January 1983 describing the holder as a British subject; or
- a certificate of registration describing the holder as a British subject; or
- an acknowledgement of a claim to remain a British subject under **s.2** of the **British Nationality Act 1948** or **s.31(3)** of the British Nationality Act 1981; or
- relevant documents related the parents, grandparents, spouse etc, similar to those required the establish British Dependent Territories citizenship, but which establish that the applicant became, on 1 January 1949, a British subject without citizenship under **s.13** or **16** of the **British Nationality Act 1948**, and had that status on 31 December 1982

2.6 British protected persons

2.6.1 A claim to British protected person status should be supported by:

- a passport issued on or after 1 January 1983 describing the holder as a British protected person; or

- a certificate of registration, describing the holder as a British protected person, issued under **Article 7(2)** of the **British Protectorates, Protected States and Protected Persons Order 1982**; or
- other documents and information which show that the person can be regarded as a British protected person under:
 - i. any provision of the **1982 Order**; or
 - ii. the **Solomon Islands Act 1978**.

3. **Ordinary residence in Hong Kong**

3.1 All applications should be supported by evidence that the applicant was:

- ordinarily resident in Hong Kong at the date of the application; and
- ordinarily resident there at "the relevant date"

3.2 The terms "ordinary residence" and "ordinarily resident" are not defined in nationality law, but guidance on the meaning of the terms can be found in "**ORDINARY RESIDENCE**" in Volume 2 Section II. It is not possible to lay down hard and fast rules about what evidence will be needed to establish ordinary residence in any particular case. In many cases, it is expected that the evidence listed below will be sufficient to show to our satisfaction that applicants were ordinarily resident in Hong Kong on both of the dates applicable to them without the need for further enquiry.

3.3 Absences from Hong Kong for holiday or other temporary purposes do not prejudice ordinary residence there. However, care needs to be taken with absences abroad for employment, business or study purposes. These absences can last for several years, and the

circumstances of particular cases may indicate that the applicant could no longer be regarded as having been ordinarily resident in Hong Kong.

3.4 The kind of evidence which will enable the ordinary residence requirement to be assessed is:

- a Hong Kong Immigration Department Travel Record for the previous 5 years; and
- a travel document or documents covering periods up to and beyond the application date and showing any absences from Hong Kong, or showing a pattern of absences which clearly indicate that the applicant's normal place of residence was Hong Kong at the relevant times; or
- letters from employers in Hong Kong confirming the periods during which the applicant was in their employ; or
- letters from educational establishments confirming the periods during which the applicant attended or was enrolled

3.5 Some applicants may be unable to produce any of the evidence in paragraph 3.4 above. They may never have held a travel document, and they may be self-employed, unemployed or retired. In such cases, we should ask to see any other available documentary evidence of their residence in Hong Kong. At our discretion, we may accept:

- notices of tax liability
- letters from accountants
- records of rent or mortgage payments, or (as a last resort)

- testimonials from persons in good standing who can attest to having been personally acquainted with the applicant in Hong Kong

3.6 It may be helpful, in borderline cases, to send a Residence Questionnaire (EM) (see Annex G) and to ask for evidence that the applicant maintained a home and/or family in Hong Kong at the relevant times.

3.7 Applicants who were minors (i.e. under 18 years of age) on the date of application and/or 4 February 1997 should have their ordinary residence on the date(s) concerned assessed by reference to their parents' place(s) of ordinary residence on that date. The same will apply if an applicant was born on or after 4 February 1997. In such cases, the evidence of ordinary residence, required in paragraphs 3.3-3.6 above, will be required in respect of at least one of the applicant's parents.

4. **Claims to have been solely British immediately before "the relevant date"**

4.1 The following procedure applies generally for determining whether applicants had claims to other nationalities, but there are separate procedures for applicants of Indian or Pakistani origin and for certain applicants of Chinese ancestry (see paragraphs 4.6-4.8 below).

4.2 If applicants have declared that:

- a. they hold no nationality other than British, and
- b. neither they nor either parent was born outside Hong Kong, and
- c. both parents have no nationality other than British,

it can normally be assumed that they had no claim to any other nationality or citizenship on "the relevant date".

NB. Ethnically Chinese women who marry Muslim men usually adopt Muslim names on marriage. It is therefore important to ensure that the names before marriage of female applicants and their mothers are given (as required) on the application form, since a Chinese name may indicate a claim to Chinese citizenship.

- 4.3 If applicants have declared that they have another nationality, and if they held this "at the relevant date", they will not be eligible for registration. If the applicant or either parent was born outside Hong Kong, or if either parent is stated to hold another nationality, it is possible that the applicant will hold another nationality. In these circumstances, it will normally be necessary to have a statement from the authorities of the country or countries concerned confirming that the applicant did not have its/their nationality or citizenship on "the relevant date". Such letters of confirmation should not be taken at face value if they appear to conflict with the information we hold about the citizenship laws of the countries concerned. Further enquiries, or an interview with the applicant, may be needed to resolve any apparent discrepancies. Information on the citizenship laws of the countries most likely to be encountered is held in the Nationality Policy Team.
- 4.4 If applicants claim to have tried, unsuccessfully, to obtain a letter confirming non-possession of another citizenship, they should be asked to give their written consent to our writing direct to the authorities of the country concerned. In the case of Chinese citizenship, the British Consulate-General in Hong Kong should be asked to forward our letter to the Hong Kong Special Administrative Region Immigration Department. If applicants do not give their consent to this within a reasonable time, after being reminded, they will not have established their entitlement to registration and they should be notified that their applications are refused.
- 4.5 Where it appears that an applicant has been issued with a formal document (e.g. a passport or certificate) describing the person as a citizen of another country, but information held about that country's nationality laws indicates that dual nationality is not permitted, it should

not be assumed that the document was issued incorrectly. Instead, further enquiries should be made along the lines of 4.3 - 4.4 above. In particular, the applicant should be asked to provide a letter from the relevant authorities confirming that:

- the document concerned was issued in error, and
- the applicant was *at no time* a citizen of that country or lost the citizenship of that country on a specific date

4.6 Applicants of Indian origin

4.6.1 Annex H provides details of Indian citizenship law which should be sufficient to enable you to determine if the applicant holds Indian citizenship.

4.7 Applicants of Pakistani origin

4.7.1 Virtually all adult applicants of Pakistani origin can be assumed to have lost any claim to Pakistani citizenship by "the relevant date" if, by then, they had acquired British nationality (the exceptions are described in Annex J, paragraphs 8 and 9). There is therefore no need to request evidence that such applicants had no claim to Pakistani citizenship.

4.7.2 More detailed information about Pakistani citizenship law is contained in Annex J.

4.8 Applicants of Chinese origin

4.8.1 If applicants produce Hong Kong Permanent Identity Cards which have the symbol ***, it is almost certain that they are of Chinese ancestry and are Chinese citizens (despite the official disclaimer in Annex E). They should therefore be asked, regardless of where they are applying, to contact the Hong

Kong Special Administrative Region Immigration Department for confirmation that they were not Chinese citizens.

4.8.2 However, it should be noted that the issuing authority can remove these asterisks at the holder's request and, therefore, their absence is not conclusive proof that the holder was not a Chinese citizen. Where it appears from the application form or other information that applicants are wholly or partly of Chinese ancestry, they should normally be required to obtain confirmation from the Hong Kong Immigration Department that they were not Chinese citizens at "the relevant date".

4.9 Applicants of Nepalese origin

A. Before 26 November 2006

4.9.1 Nepalese law did not permit dual nationality in **any** circumstances. A person who, under the **Nepal Citizenship Law 1964**, would otherwise have been a Nepalese citizen (for example, through having been born to a Nepalese citizen father)

- automatically ceased to be a Nepalese citizen immediately upon acquiring (by whatever means) the citizenship of another country; or
- failed at the outset to acquire Nepalese citizenship if, at the relevant time (such as at the moment of birth) he or she was then a citizen of another country.

However, where the acquisition of citizenship of another country occurred whilst the person concerned was a *minor*, the latent claim to Nepalese citizenship could be revived at any time between the ages of 16 and 21 by renouncing the other citizenship and applying to the Nepalese authorities for a

Citizenship Certificate. In that event, Nepalese citizenship would be (re)acquired from the date of issue of the certificate.

B. On and after 26 November 2006

4.9.2 The law changed on 26 November 2006 when the **Nepal Citizenship Act 2006** came into force. The **2006 Act** provided that:

- a child would be regarded as a Nepalese citizen if **either** parent is a Nepalese citizen.

However, this does not apply where the child's mother is a Nepalese woman married to a Non- Nepalese man – in such cases the child would need to apply for naturalisation as a Nepalese citizen.

- children under the age of 16 who acquire another citizenship will **not** lose Nepalese citizenship automatically
- children who, at birth (or later), acquire another citizenship have, with effect from 26 November 2006, 2 years to opt for one or the other nationality after attaining the age of 16. This replaces the arrangements described above – i.e. those who, on 26 November 2006, were aged between 18 and 21 would on that date be deemed to have lost Nepalese citizenship irrevocably (and would not have until their 21st birthday to (re)acquire it)

4.9.3 As regards applications for registration under the 1997 Act made **before** 26 November 2006 by a person who acquired a form of British nationality automatically at birth:

- a. an applicant under the age of 18 should not be regarded as a Nepalese citizen (i.e. because the person cannot renounce British nationality until that age)

- b. if an applicant is aged 18 or over on the relevant date(s), a check should be made to confirm whether the applicant has renounced British nationality – if a record exists, this may be an indication that the applicant is Nepalese; if no record exists, and the applicant is aged 21 or over, it should normally be accepted that the applicant is not a Nepalese citizen.

4.9.4 If, in any case, there is information to suggest that the applicant has been issued a Certificate of Nepalese Citizenship, and has not *since then* acquired another citizenship, we should normally accept that that applicant is a Nepalese citizen. This presumption should apply unless the applicant provides written confirmation from the Nepalese authorities that the Certificate was issued incorrectly (i.e. because he was already too old or continued to hold another nationality).

Examples

- A. A person born in Hong Kong on 1.1.85 ('person A') to a Nepalese father who was settled in that territory would have been a British Dependent Territories citizen by birth. He would not have been regarded as a Nepalese citizen on the "relevant date" (i.e. 4.2.97), and could be considered to be solely British (even though he could "activate" his Nepalese citizenship at any time after 1.1.01 until 31.12.05 by applying for a Certificate of Citizenship).
- B. On 1.1.95, person A is issued with a Nepalese passport. However, the passport does not amount to evidence of Nepalese citizenship and is simply a document to enable the child to travel. The child remains, as a matter of law, solely a British national and, on 1.7.97, automatically becomes a BOC. He continues to hold BOC. On 1.1.06 (i.e. 21st birthday), he loses the option of being a Nepalese citizen.

- C. On 1.6.07, person A is issued a Certificate of Citizenship. Although, as a matter of law, it seems to have been issued in error (as he is over 18 and has never renounced BOC), the Certificate constitutes evidence of Nepalese citizenship.
- D. A person is born in Hong Kong on 1.1.55 ('person D') to a father who is Nepalese who is settled in Hong Kong. Like person A, he is issued with a Nepalese passport while still a minor. He does not renounce BDTC and therefore, on 1.1.76, loses his option to acquire Nepalese citizenship. However, on 1.6.95, he is for some reason issued with a Certificate of Nepalese Citizenship which, unlike a passport, constitutes evidence of citizenship. He is not regarded as solely British on 4.2.97 for the purposes of the **1997 Act**. Furthermore, as he appears to be a Nepalese citizen on 1.7.97, it must be assumed that he does not become a British Overseas citizen on that date (unless the Nepalese authorities subsequently confirm that the Certificate was issued in error and he was not, in fact, Nepalese).
- E. Person D registers as a BN(O) on 1.6.94. He does not renounce BDTC or BN(O) status. On 1.6.95, he is issued with a Certificate of Nepalese Citizenship. The person is deemed, for the purposes of the **1997 Act**, to be a Nepalese citizen – and therefore ineligible for registration – unless the Nepalese authorities confirm that the Certificate was issued in error and he was not, in fact, Nepalese.
- F. Person born in Hong Kong on 1.1.95 to a Nepalese father settled in Hong Kong is a BDTC otherwise than by descent and, potentially, a Nepalese citizen by descent – but he is deemed to be solely British on 1.7.97 (and therefore becomes a BOC). On 1.12.06, he is registered as a BC under the 1997 Act but, as he is still under 16, the registration does not result in the loss of Nepalese citizenship. Under the BNA 1981, he cannot renounce BC and BOC until he is 18. On 1.1.13 (i.e. his 18th birthday), he therefore, loses Nepalese citizenship.

4.10 Renunciation/loss of another nationality/citizenship

4.10.1 If applicants have declared that they had another nationality but renounced it or otherwise lost it, we will need to see evidence of renunciation or loss and of the date on which this took place. The date of renunciation or loss is crucial since the possession of any other nationality immediately before "the relevant date", or (in the case of applicants to whom **s.1(4)** and **s.1(5)** apply) the possession of another nationality at the time of the birth or registration/naturalisation as a British national, would render an applicant ineligible for registration.

4.10.2 Applicants will not be eligible for registration if they:

- were solely British immediately before "the relevant date" (or at the relevant time), and
- subsequently acquired another nationality or citizenship, and
- then renounced that other nationality or citizenship (or voluntarily gave it up by some other process equating to renunciation)

NB. An applicant who has been deprived of the other nationality or citizenship by automatic operation of another country's law should not be considered to have voluntarily given up that nationality or citizenship.

5. Consent to minors' applications

5.1 It is not necessary for minors applying for registration to obtain the consent of their parents or persons having responsibility for them.

- 5.2 If they meet the requirements, they are entitled to registration, and the application cannot be refused even if the parents or the responsible person(s) do not consent to it.