

64B. (2)
CCPC

Prime Minister Foreign and Commonwealth Office
London SW1A 2AH

21 September 1984

This problem was raised with you by EXCO. The answer is that there is nothing to be done for those of Chinese race: but we can help non-Chinese BDTCs. This will probably satisfy EXCO.

Dear Charles,

Future of Hong Kong: Nationality

C.D.P. 24/9.

Thank you for your letter of 20 September, enclosing a record of the Prime Minister's meeting with the Governor and the Unofficial members of the Executive Council of Hong Kong on 19 September.

At the meeting, the Prime Minister undertook to look further into the problem of BDTC's who would lose their right to transmit British nationality for one generation even if they chose to leave Hong Kong permanently before 1997, and concluded that the scope for action under the British Nationality Act needed to be examined further.

Three of the Unofficials - Mr Roger Lobo, Mr T S Lo and Miss Maria Tam, together with the Hong Kong Attorney-General - called on the Department on 20 September to discuss the problem at greater length. FCO officials explained the difficulties in retaining transmissibility for former British Dependent Territories Citizens (BDTCs) of Chinese race, wherever they were living. Under the Chinese Nationality Law, such persons would be considered as Chinese nationals unless they had settled abroad and acquired the nationality of that country. As Sir Geoffrey Howe pointed out at the Prime Minister's meeting, there would be a very adverse reaction from the Chinese if HMG tried to reopen the idea of transmissibility for such people. Moreover, if such people did retain transmissibility they would almost certainly lose the right of abode in Hong Kong, and thus have no right of abode anywhere. This would mean that most countries would be very chary of letting BDTCs from Hong Kong in at all. We believe that most of the Unofficials accepted that transmissibility for such persons was impossible, although Maria Tam may still have reservations.

/ Mr Lobo

C D Powell Esq
10 Downing Street



Mr Lobo and Miss Tam also raised the question of former BDTs of non-Chinese race. They said that the Chinese had made it clear that such people would not be considered as Chinese nationals, although they could apply for this status, and that the Chinese would have no objection to their retaining British nationality. If provision was not made for these people to retain British nationality their children born after 1997 would be stateless. Such people might not wish to apply for Chinese nationality. FCO officials explained our intention to make provision in the relevant legislation on similar lines to Schedule 2 of the British Nationality Act 1981 (BNA), to allow such children to register as British nationals if they were stateless.

Mr Lobo said that it would be unacceptable for such children to be born stateless and to have to apply for British nationality. After all, they would have had British nationality by right but for our decision to drop transmissibility. He would not feel able to support arrangements of this kind and would have to make his feelings known publicly. He was sure other members of EXCO would support him. His own view was that transmissibility should be retained for such people.

FCO officials discussed this problem with Home Office officials today. They agreed that the arguments against retaining transmissibility directly and explicitly for this group were compelling. Legislation to do this would virtually have to be based on racial criteria, and would be very divisive in Hong Kong. Mr Lobo's point could, however, be met by providing for such children to acquire British nationality automatically at birth if they would otherwise be stateless, on the lines of Sections 1 and 2 of Schedule 2 of the BNA, which at the moment apply only to people born in the UK and Dependent Territories. Home Office officials today agreed to put up a recommendation to this effect to the Home Secretary. We are telegraphing to Hong Kong to obtain their reactions. If this course is agreed, we will have to make sure that the Chinese would raise no objection to such provisions applying to children of non-Chinese nationals born in the SAR. But we are confident that they will accept this.

/ If the



If the Home Secretary and EXCO are content, and the Chinese do not object, we would be able to say, in reply to questions after the publication of the agreement, that we would make provision for children born after 1997 to former BDTCs who were not Chinese nationals to acquire British nationality at birth if they would otherwise be stateless. We would not be able to go into details of how this would be done until the time came for the drafting of the relevant legislation.

Yours ever,

Colin Budd

(C R Budd)
Private Secretary

hus hus PT 16
future

7
8
9
10
11
12
1
2
3
4
5
6

24 SEP 1984



S E C R E T

File with ODP 25/9
K07



FILE

cc: [initials]

68.

10 DOWNING STREET

From the Private Secretary

25 September, 1984

FUTURE OF HONG KONG: NATIONALITY

Thank you for your letter of 21 September explaining what can and cannot be done to deal with a number of points on nationality raised by the Unofficial members of the Executive Council of Hong Kong at their meeting with the Prime Minister on 19 September.

The Prime Minister has noted this and hopes that the proposal to allow the children of former BDTC's of non-Chinese race to acquire British nationality automatically at birth if they would otherwise be stateless will be acceptable to all.

I am sending a copy of this letter to Hugh Taylor (Home Office).

(C.D. Powell)

C. Budd, Esq.,
Foreign and Commonwealth Office.

S E C R E T

CS



Foreign and Commonwealth Office

London SW1A 2AH

20 September 1984

W N Hyde Esq
Home Office
Queen Anne's Gate
LONDON

Dear Wilfred,

FUTURE OF HONG KONG; NATIONALITY

1. As you will know, the Governor and the Unofficial Members of the Executive Council of Hong Kong have been in London this week. Their purpose was to advise the Prime Minister on whether or not HMG should agree to initial the draft Agreement which has been reached with the Chinese Government on the future of Hong Kong. They advised that HMG should initial it. However they made clear to all the Ministers whom they saw, including the Prime Minister, that they had serious worries about certain aspects of the way nationality would be dealt with.
2. I held a separate meeting with some of the Unofficials this morning to try to establish exactly what they thought needed to be done.
3. The major question which emerged from this meeting was the treatment of children born after 1 July 1997 to former Hong Kong BDTs not of Chinese race. In such cases, according to the exchange of memoranda the parents will retain British national status after 1 July 1997, but as I understand it, the children would only be eligible for this if they fall within the provisions concerning statelessness that we intend to make on the lines of Schedule 2 of the British Nationality Act 1981.
4. The Unofficials represented that any system in which children of such people would have to be stateless before they could register as British nationals would be wholly unacceptable in Hong Kong and would give rise to major opposition to the Agreement. They also indicated that they would feel unable to support HMG in public on it. This is a source of great concern to Ministers, and I think that we must do our best to deal with it. It will be essential to have a satisfactory answer to give when the Agreement is published next week.

/5. What



5. What the Unofficials essentially wish is to have a provision whereby those children born after 1997 in Hong Kong to ex-BDTCs who are not Chinese under the Chinese Nationality Law should be able to choose whether they retain British nationality or seek Chinese nationality. I have considerable sympathy with the arguments of Unofficials that such people must not be forced to seek Chinese nationality in circumstances where it is uncertain whether the Chinese would be willing to grant it (or what conditions they might seek to impose).

6. We argued strongly that provisions along the lines of Schedule 2 of the British Nationality Act should remove the concern about the fate of such people. The Unofficials argued equally strongly that it would not, since under the type of conditions contained in the schedule people would have actually to become stateless before they would be able to apply for the appropriate form of British Nationality.

7. Since the discussion we have consulted Schedule 2 of the Act again. Section 4 of Schedule 2, which covers those born outside the United Kingdom and Dependent Territories makes it clear that the person has to prove that he is stateless before he is eligible for registration. As I have said before this would be unacceptable. It seems to me however that the problem could and should be resolved by using the wording in Section one of Schedule 2 which allows for automatic acquisition of the appropriate form of British citizenship where the person would otherwise be born stateless.

8. Such an approach would be in accord with the Chinese Nationality Act, of which I attach a copy. Section 6 gives Chinese nationality to persons born to parents who are stateless and have settled in China. This would not be the case here as the parents would have British nationality. Section 7 provides for acquisition of Chinese nationality by stateless persons on application, but not automatically by birth.

9. Ministers here are most concerned that this problem should be resolved quickly and satisfactorily. I should be most grateful if we could meet tomorrow to discuss the points in the letter. This would leave time to consult Ministers as necessary over the weekend.

As agreed,

Allyson Hume

for A C Galsworthy
Hong Kong Department