



Press Statement

The Law Society of Hong Kong notes the Court of Final Appeal (“CFA”) published its judgment (“Judgment”) in the case of *Vallejos Evangeline Banao and Domingo Daniel L. v. Commissioner of Registration and Registration of Persons Tribunal* (“Vallejos”) ¹ and has the following observations:

1. Foreign Domestic Workers - Right of Abode

We note the CFA dismissed the appeal of the appellants, Ms. Vallejos Evangeline Banao and Mr. Domingo Daniel L., who were seeking permanent residency status pursuant to Article 24(2)(4) of the Basic Law.

2. Reference to the NPCSC under Article 158(3) of the Basic Law

The Government made submissions that the CFA should seek an interpretation from the Standing Committee of the National People's Congress (“NPCSC”) on²:

- a. what is the meaning of an "interpretation" which the NPCSC has power to give under Article 158(1) of the Basic Law; and
- b. Whether a statement³ in the 1999 Interpretation⁴ by the NPCSC of Articles 22(4) and 24(2)(3) of the Basic Law is or constitutes part of an "interpretation" within the meaning of Article 158(1), such that it is binding on and shall be applied by the courts of the HKSAR when deciding cases involving any one of the categories under Article 24(2) of the Basic Law (including Article 24(2)(4)).

We note the CFA's decision on the residency rights of the foreign domestic helpers was based on a thorough analysis of the meaning of "*ordinarily resident*" without the assistance of any "extrinsic materials". The CFA has made a determination that its adjudication is within its limits of autonomy under Article 158(2) of the Basic Law and it has thus decided there is no need to make any referral to the NPCSC.

The CFA judgment provides a clear analysis of the court's jurisdiction under Article 158 of the Basic Law and notes that before the CFA can make a reference to the NPCSC it must be satisfied that the following conditions are fulfilled, namely "classification, necessity and arguability". ⁵

The judgment has put the residency status of foreign domestic helpers in Hong Kong beyond doubt and has clearly set out the circumstances and requirements where the CFA would be obliged to seek an interpretation of the Basic Law from the NPCSC.

The Law Society respects the CFA's analysis and decision.

In our Press Release of 10 October 2012 we have noted that the community has expressed its concerns too many interpretations of the Basic Law by the NPCSC can undermine the independence of the Judiciary and the rule of law, which are recognized as core values of Hong Kong. On the question of Mainland Mothers giving births in Hong Kong, given established legal principles, the Law Society considered that a referral to the NPCSC to interpret Article 24(2)(1) of the Basic Law will undermine the core values of Hong Kong.

Given the CFA's judgment in *Vallejos*, the Law Society urges the Government not to seek a free standing interpretation of the Basic Law on the two questions⁶ upon which the Government has originally asked the CFA to seek an interpretation.

The Law Society of Hong Kong
25 March 2013

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1. FACV 19 & 20 2012
 2. Paragraphs 94 and 95 of the Judgment
 3. A statement concerning the legislative intent set out in paragraph 95 of the Judgment
 4. The Interpretation by the Standing Committee of the National People's Congress of Articles 22(4) and 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China
 5. Paragraphs 103 (5) and (7) of the Judgment
 6. See section 2(a) and (b) above.