

Judgment Update



Fateh Muhammad v Commissioner of Registration & The Registration of Persons Tribunal FACV No 24 of 2000 (20 July 2001)

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**Fateh Muhammad v
Commissioner of Registration &
Registration of Persons Tribunal**
FACV No 24 of 2000 (20 July 2001)

Muhammad
appealed to the
CFA

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The CA confirmed the decision of the CFI. Applying a purposive approach in interpreting BL 24(2)(4), the CA decided that the three conditions in BL 24(2)(4), namely, (i) having entered Hong Kong with valid travel documents (ii) having ordinarily resided in Hong Kong for a continuous period of not less than seven years and (iii) having taken Hong Kong as their place of permanent residence should be satisfied concurrently. It was not the intention of the Basic Law to confer a permanent right of abode on a person with tenuous connection with Hong Kong.

Date of Judgment
19 April 2000

Muhammad
appealed to the
CA

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The applicant, Fateh Muhammad, was a Pakistani who had lived in Hong Kong for the last 35 years or so. He was convicted and sentenced to imprisonment in Hong Kong. A few days before his sentence was completed the Secretary for Security ordered his deportation from Hong Kong. He applied to the Director of Immigration for verification that he was eligible for a Hong Kong permanent identity card, which was in effect an application for confirmation that he had the right of abode in Hong Kong. The Director refused Muhammad's request and Muhammad appealed to the Registration of Persons Tribunal. The appeal was allowed and the Director applied for judicial review of the decision.

The CFI held that the requirement of the Immigration Ordinance that immediately before the application for the status of Hong Kong permanent resident, the applicant should have ordinarily resided in Hong Kong for a continuous period of 7 years was compatible with BL 24(2)(4). The provision that imprisonment or detention broke the continuity of ordinary residence was also compatible with BL 24(2)(4).

Date of Judgment
24 June 1999

Judgment Update



Fateh Muhammad v Commissioner of Registration & The Registration of Persons Tribunal

FACV No 24 of 2000 (20 July 2001)

The appellant, Mr Fateh Muhammad, claimed to be a Hong Kong permanent resident with the right of abode here. He applied to the 1st respondent, the Commissioner of Registration, for a Hong Kong permanent identity card, which would be official recognition of his permanent resident status. The Commissioner took the view that Mr Muhammad did not have such status. So the Commissioner refused to issue Mr Muhammad a permanent identity card.

It was Mr Muhammad's case that he came within the category of permanent residents set out in BL 24(2)(4) which covers:

"Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the [HKSAR]."

Mr Muhammad has lived in Hong Kong since the 1960s. But his time in Hong Kong includes his imprisonment here from 27 April 1994 to 27 February 1997 serving a sentence for conspiracy to utter forged banknotes and conspiracy to deliver counterfeit banknotes. And of course seven years have not elapsed since his release from prison. The 2nd respondent, the Registration of Persons Tribunal, held that Mr Muhammad was a permanent resident. But both the CFI and the CA held that he was not. He appealed to the CFA.

Dismissing Mr Muhammad's appeal, the CFA held as follows:

- (1) Subject to the possibility of an argument that an extremely short period of imprisonment does not interrupt the continuity of residence, being in prison or a training or detention centre pursuant to a criminal conviction which has never been quashed or a sentence or order which has never been set aside does not constitute ordinary residence in Hong Kong

within the meaning of BL 24.

- (2) The seven continuous years required by that article must come immediately before the time when an application for permanent resident status is made in reliance on those seven continuous years.
- (3) Accordingly the legislature was acting constitutionally when it passed legislation under which (a) imprisonment or detention does not count as ordinary residence and (b) the seven years' ordinary and continuous residence relied upon in an application for permanent resident status made in reliance upon BL 24(2)(4) must come immediately before the time when the application is made.
- (4) For the foregoing reasons, Mr Muhammad does not yet have permanent resident status because he has not yet achieved seven years' ordinary and continuous residence in Hong Kong immediately before applying for such status.

Mr Muhammad is being permitted to remain in Hong Kong, and might three years from now make another application for Hong Kong permanent resident status. Paragraph 1(5)(b) of Schedule 1 to the Immigration Ordinance, Cap 115 might be relevant to such application. The effect of this provision, if it is constitutional, is that even a person who has achieved seven years' continuous and ordinary residence in Hong Kong cannot obtain permanent resident status unless the Director of Immigration exercises his discretion to lift any limit on that person's stay. The CFA left open the question whether or not this provision is constitutional.