



Australian Government
Refugee Review Tribunal

Country Advice

China

China – CHN36418 – Overseas Chinese –
Huáyì – Right of return – Nationality –
Hukou
26 March 2010

1. Please provide information on the treatment of overseas Chinese who return to the PRC, with a view to whether such treatment may amount to serious harm.

The Right of Return to the PRC

There are provisions in both the constitution and the nationality law of the People's Republic of China that allow ethnic Chinese born abroad to acquire Chinese nationality. Article 5 of the *Nationality Law of the People's Republic of China* states the following:

Any person born abroad whose parents are both Chinese nationals and one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.¹

If a person's parents remained Chinese nationals then article 5 would theoretically entitle them to Chinese nationality, providing they hadn't been granted citizenship of any other country. On paper, Article 5 provides a right of return to all stateless ethnic Chinese whose parents were Chinese nationals.

Article 7 of the *Nationality Law of the People's Republic of China* states that:

Foreign nationals or stateless persons who are willing to abide by China's Constitution and laws and who meet one of the following conditions may be naturalised upon approval of their applications:

1. they are near relatives of Chinese nationals;
2. they have settled in China; or
3. they have other legitimate reasons.²

Article 7 of the Law therefore reinforces the view that such a person would be entitled to apply for Chinese citizenship and the likelihood that they could obtain residency.

Article 50 of the *Constitution of the People's Republic of China* states the following:

The People's Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad and protects the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad.³

¹ *Nationality Law of the People's Republic of China* (Adopted at the Third Session of the Fifth National People's Congress, promulgated by Order No.8 of the Chairman of the Standing Committee of the National People's Congress on and effective as of September 10, 1980), China.org.cn website

<http://www.china.org.cn/english/LivinginChina/184710.htm> – Accessed 24 March 2010 – Attachment 1
² DIAC Country Information Service 2010, *Country Information Report No. 10/14 – China: Rights of non-resident Chinese nationals and the residence application process*, (sourced from DFAT advice of 22 March 2010), 22 March – Attachment 2

³ *Constitution of the People's Republic of China* (adopted December 4, 1982) – Attachment 3

While article 50 does not specify precisely what constitutes the lawful rights and interests of family members of Chinese nationals residing abroad, it could be interpreted as constitutional protection of such a person's rights to PRC nationality under articles 5 and 7 of the *Nationality Law of the People's Republic of China*.

Overseas Chinese (Huáyì)

One estimate states that there are approximately 36 million Overseas Chinese living in the diaspora. Overseas Chinese born in the diaspora are known as Huáyì inside the People's Republic of China, while PRC born Chinese who have left China to live abroad are known as either Huaqiao or Haigui (turtle).⁴ A number of stories in both the Chinese and international media suggest that the PRC actively encourages the return to China of Huaqiao by providing incentives otherwise not available to most citizens in order to attract skilled professionals in short supply. It is not clear from these reports whether such incentives are also available for professional Huáyì. The *China Daily* states that 'green passage' is available "for acclaimed scientists, engineers and top company executives who are willing to return to work in the mainland." So-called "high-end talents" are no longer bound by Hukou (household registration) restrictions or payroll quotas that could potentially limit salaries at state-owned institutions. Furthermore, "their families will be given preferential access to jobs and schools. These enticements include the guarantee of privileged university admission for their children."⁵

There is a special visa category for professional ethnic Chinese who have either never had or who no longer hold Chinese citizenship. Since 2004 there has also been a permanent residence visa (sometimes referred to as China's green card). However, a 2008 report states that it is "designed for investors, highly qualified workers, professors and their families" and that the "criteria to obtain the permit are relatively strict. An investor must have been investing in the Chinese market for a minimum of three years. An employee must have been living in China for three years and earn a good salary." However, the permit does allow its holder to settle anywhere inside China (Hukou exemption).⁶ The fact that such visas exist suggests that the PRC primarily wants to encourage the migration of highly skilled professional Chinese and that the nationality rights under articles 5 & 7 of the *Nationality Law of the People's Republic of China* are not easy to access.

Although it is thought that, historically, many Huáyì have migrated to the PRC, little statistical information or stories of their experiences have been published. Once viewed as hanjian (traitors to China), attitudes to the Huáyì have changed significantly since the Open Door policy was introduced in 1978. According to H el ene Le Bail and Wei Shen, in the Mao era, "overseas Chinese were considered as members of the bourgeois and capitalist class. Chinese returning from abroad or the families of emigrants were frequently targets of repression."⁷

A 2005 study on how the government of the PRC views the diaspora suggests that in the post-Mao Open era, the PRC government views the Huáyì as an enormous resource for foreign

⁴ 'Overseas Chinese' (undated), All Experts website http://en.allexperts.com/e/o/ov/overseas_chinese.htm – Accessed 26 March 2010 – Attachment 4

⁵ Rong, J. 2007, 'The turning tide of overseas Chinese', *China Daily*, 30 May http://www.chinadaily.com.cn/china/2007-05/30/content_883647.htm – Accessed 23 March 2010 – Attachment 5

⁶ Le Bail, H. & Wei, S. 2008, *The Return of the "Brains" to China: What are the Social, Economic, and Political Impacts?*, Centre Asie, November, p 22 – Attachment 6

⁷ Le Bail, H. & Wei, S. 2008, *The Return of the "Brains" to China: What are the Social, Economic, and Political Impacts?*, Centre Asie, November, pp 4-5 – Attachment 6

direct investment, business networking, cultural connections with foreign states, and as a source of professional skills.⁸ In other words, the change of heart has been motivated by economic pragmatism. This new economic pragmatism does not automatically translate into a reduction of suspicion. The paper does not, however, examine the treatment of Huáyì who settled permanently in the PRC. No sources have been located that examine attitudes of average Chinese citizens towards the Huáyì. The *China Daily* has reported that there is significant resentment towards the Haigui due to their level of privileges.⁹

Household Registration (Hukou)

As stated previously, highly skilled professionals are given ‘green passage’, which includes not being subject to Hukou (household registration) regulations. For other migrants, Hukou registration can cause substantial problems. Without Hukou registration in one’s place of residence, services such as health, education and housing are extremely difficult to access and previous RRT research indicates that Hukou rules are still rigorously applied in many provinces, and in particular in the large, wealthy cities in the coastal provinces. Acquisition of Hukou registration requires not only that a person be born in the Hukou region, but also that one’s parents were also registered in the region. For people born overseas before the creation of the People’s Republic of China, it is unclear which Hukou they would be permitted to register in, if they were to gain PRC nationality.

Attachments

1. RRT Country Advice, *Country Advice HKG35807*, 11 January.
2. *Nationality Law of the People’s Republic of China* (Adopted at the Third Session of the Fifth National People’s Congress, promulgated by Order No.8 of the Chairman of the Standing Committee of the National People’s Congress on and effective as of September 10, 1980), China.org.cn website
<http://www.china.org.cn/english/LivinginChina/184710.htm> – Accessed 24 March 2010.
3. *Constitution of the People’s Republic of China* (adopted December 4, 1982).
4. DIAC Country Information Service 2010, *Country Information Report No. 10/14 – China: Rights of non-resident Chinese nationals and the residence application process*, (sourced from DFAT advice of 22 March 2010), 22 March. (CISNET China CX241271)
5. Rong, J. 2007, ‘The turning tide of overseas Chinese’, *China Daily*, 30 May
http://www.chinadaily.com.cn/china/2007-05/30/content_883647.htm – Accessed 23 March 2010.
6. Le Bail, H. & Wei, S. 2008, *The Return of the “Brains” to China: What are the Social, Economic, and Political Impacts?*, Centre Asie, November.
7. Barabantseva, E. 2005, *Trans-nationalising Chineseness: Overseas Chinese Policies of the PRC’s Central Government*, Deutsche Gesellschaft für Asienkunde website, July
http://www.asienkunde.de/content/zeitschrift_asien/archiv/pdf/Barabantseva96.pdf – Accessed 25 March 2010.

⁸ Barabantseva, E. 2005, *Trans-nationalising Chineseness: Overseas Chinese Policies of the PRC’s Central Government*, Deutsche Gesellschaft für Asienkunde website, July
http://www.asienkunde.de/content/zeitschrift_asien/archiv/pdf/Barabantseva96.pdf – Accessed 25 March 2010 – Attachment 7

⁹ Rong, J. 2007, ‘The turning tide of overseas Chinese’, *China Daily*, 30 May
http://www.chinadaily.com.cn/china/2007-05/30/content_883647.htm – Accessed 23 March 2010 – Attachment 5