



RESPONSES TO INFORMATION REQUESTS (RIRs)

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CHN43512.E

China: Whether a foreign-born spouse and child of a Chinese national can enter China, reside there and acquire Chinese nationality; whether the parents would encounter difficulties in returning to China or be penalized under family planning regulations if, in addition to the foreign-born child, a second child were born to the couple in China (2003-2005)

Research Directorate, Immigration and Refugee Board, Ottawa

The Law of the People's Republic of China on Entry and Exit of Aliens stipulates that, to enter China, foreign nationals must apply for entry visas at Chinese diplomatic missions, consulates or other offices abroad (PRC 1 Feb. 1986, Art. 6). Foreigners who wish to reside permanently in China must apply for a D Visa at the visa office of the Chinese mission in the consular jurisdiction of their place of residence abroad (PRC 14 Sept. 2004).

In August 2004, the new Measures for the Administration of the Examination and Approval of Permanent Residence in China of Foreigners went into effect (Deacons Oct. 2004; see also *Beijing Review* 7 Oct. 2004). Under the new regulations, foreigners can apply for permanent residence in China if "they abide by China's laws, are in good health, have no record of breaking the law" and fall in one of a number of categories. Among the categories listed is the situation when applicants "are the spouses of a Chinese citizen or a foreigner with permanent residence in China, provided they have been married for five years, they have lived in China for five years during which they have spent at least 9 months per year in China and they have a stable income and residence" (Deacons Oct. 2004). Prior to the promulgation of the new measures, a senior official in the Ministry of Public Security noted that the regulations were aimed largely at "high-level foreign professionals and big investors" who are in great demand in China (*People's Daily* 18 Dec. 2003).

On the question of naturalization of a foreign-born spouse and child of a Chinese national, Article 5 of the Nationality Law of the People's Republic of China states that:

Any person born abroad whose parents are both Chinese nationals or 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 (PRC 10 Sep. 1980).

Article 7 of the Law further 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 naturalized 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 (ibid.).

According to the Nationality Law, China does not recognize dual nationality (ibid., Art. 3), and any foreign national who acquires Chinese nationality cannot retain his or her foreign nationality (ibid., Art. 8). Further information on whether a foreign-born spouse and child of a Chinese national can enter China, reside there and acquire Chinese nationality could not be found among the sources consulted by the Research Directorate.

Information on whether couples with more than one child would be penalized under family planning regulations or encounter difficulties in returning to China was scarce among the sources consulted by the Research Directorate. In a 21 January 2004 Response to Information Request, the Resource Information Centre (RIC) of the U.S. Citizenship and Immigration Services quoted an anthropologist who co-authored a 2001 report on China's family planning policies as saying that "[i]n general, people who return to China from abroad are actively welcomed back to the 'motherland,' and children born outside China largely forgiven" (U.S.). According to a China specialist at the U.S. Department of State, also quoted in the RIC Response, while the implementation of family planning policies varies across the country, some people in Guangdong and Fujian reported no difficulties in returning to China after having had children abroad (U.S. 21 Jan. 2004). It should be noted that Article 24 of the 2002 Population and Family Planning Regulations of the Province of Guangdong stipulates that the provisions contained in the regulations apply to Chinese returning from overseas (PRC 25 July 2002). For further information on family planning policies in Guangdong and Fujian and their application to couples returning from overseas, please see CHN43031.E of 24 February 2005.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

References

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Additional Sources Consulted

Oral source: Home Office, Immigration and Nationality Directorate, U.K.

Internet sites, including: European Country of Origin Information Network (ECOI); Foreign Affairs Canada; International Organization for Migration (IOM); Home Office, Immigration and Nationality Directorate, U.K

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