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### **FAX** (from cmlo)

DATE: 7 January 2004

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TO: MR ADVOCATEN EN PROCUREURS

ATTN//YREF: Michel Collet, Esq.

FAX//TEL: 0031 416 330673//0031 416 335516

FROM//OREF: **Peter Jiang**

RE: Ms.                    matter

### **MESSAGE:**

Dear Michel,

We refer to your email dated 22 November 2004 and your fax dated 6 December 2004 concerning Ms.                    's matter, and answer raised questions as follows:

#### **I. Can the children stay in China and what will be required for that?**

According to Chinese law, the children shall be allowed to stay in China with their Chinese mother, either by extending visa "L" or by getting Permanent Residence Permit.

According to Ms.                    , the children hold visa "L" at present, but will expire in February 2005. Ms.                    complained that the validity period of visa "L" is only 3 months and can only be extended once, so the children will have to leave China in February 2005.

Ms.                    was right according to old policy. However, we have learned from Exit-Entry Administration of Shanghai Public Security Bureau that the old policy has been replaced since the end of 2004. According to the new policy, the validity period of visa "L" is longer and can be extended for unlimited times. So, it shall no longer be a problem for the children to extend their visa.

Another possible approach for the children to stay in China is to apply for Permanent Residence Permit according to the Regulations on Examination and Approval of Alien Permanent Residence in China, which took effect as of 15 August 2004. According to Article 6(6) of the Regulations, unmarried children under 18 years old coming to China to seek support from their parents shall be granted Permanent Residence Permit.

However, detailed enforcement rules of Article 6(6) slightly vary from province to province. According to Exit-Entry Administration of Shanghai, the children invoking Article 6(6) are required to be born as foreigners according to Nationality Law of PRC. Whether Ms.                    's two children satisfy the standards is upon examination of the Exit-Entry Administration office.



## II. Possible disadvantages for the children to stay in China as foreigners

### (i) Education

In China, school education includes three periods: primary school (6 years), junior high school (3 years) and senior high school (3 years). Primary school and junior high school education are compulsory. College/university education is after senior high school. Children with foreign nationality may have different disadvantages in different periods.

#### Primary School and Junior High School

According to Compulsory Education Law of PRC, education of primary school and junior high school is compulsory and tuition-free. The law itself does not explicitly say whether or not it applies to foreign children. However, in practice, Hukou is required for entrance registration.

Children with foreign nationality are not Chinese citizens and do not have Hukou, so they cannot enjoy free education in China. They would be registered and treated as foreign students or so-called Borrowing School Students. The enrollment and administration of those students are different from normal Chinese students. In the present case, Ms. two children may have three options in order to go to school in China:

- go to a private school qualified to have international students. That is very expensive, could be thousands of US dollars or even more for one year.
- Go to a public school qualified to have international students upon paying required tuition fee. According to Shanghai Education Administration, the annual tuition fee is RMB 4200 for normal classes and USD5000 for the classes which gives lessons in English.
- There are preferential policies for the children identified as Chinese people with foreign nationalities. In that case, the children can apply to go to public schools without paying tuition fee, but normally they have to pay a so-called Borrowing School Fee, currently RMB 1000 for primary school and RMB 1600 for junior high school every year, according to Shanghai Education Administration.

#### Senior High School

Basically the situation of students with foreign nationality at this period is same with their situation at the period of primary school and junior high school, except the following differences:

Senior High School Education is neither compulsory nor free in China. Annual tuition fee for the students with Shanghai Hukou varies from RMB 1800 to RMB 4000. However, students with foreign nationality have to pay much more to go to public senior high school.

It is possible for the children in present case to go to public senior high school as Borrowing School Students if they are identified as Chinese people with foreign nationality. However, according to Shanghai Education Administration, qualification examination for Borrowing School at senior high school period is stricter than that at lower-level school period, and Borrowing School Students have to pay Borrowing School Fee, amounting to RMB 3000 every year, as well as tuition fee.



### University/College Education

When Chinese students graduate from senior high school, they can attend national examination for entrance of university and then, if they pass, go to university/college.

However, students with foreign nationality are not qualified to attend the national examination, but have to attend the examinations designed for foreigners and apply to go to university/college as foreign students. Tuition fee of foreign students varies in different university/college, but definitely much higher than tuition fee of Chinese students.

#### **(ii) Medical Security**

China does not have systematic medical security for children. Basically medical costs of children are borne by their families. Some Chinese employers assist their employees to pay for their children's medical costs upon certain requirements being satisfied, such as one-child policy being abided by the family.

Some local governments have found their own way to help children. In Shanghai, a Mutual Assistance Fund on Hospital Cost, mainly for children under 18 years old, has been established since 1996. Children with Shanghai Hukou are entitled to join the Fund and pay certain money to the Fund every year. When they incur hospital fee, they are partly reimbursed by the Fund.

However, according to Administration Regulations of the Fund, beneficiaries are limited to the children with Shanghai Hukou. Therefore, Ms. [redacted] s two children cannot join the Fund since they have Dutch nationality.

#### **(iii) Influence of One-Child Policy**

In China, there are some preferences and priorities only for the families which abide by the one-child policy and the children of such families, including one child allowance, being reimbursed for children's medical costs and spiritual encouragement, etc.

In the present case, since Ms. [redacted] has two children and the children have dutch nationality, they are excluded from all and every preferences or priorities provided to one-child family.

#### **(iv) Other disadvantages**

Besides the disadvantages mentioned above, we believe that the two children in present case may have other unforeseeable disadvantages and inconveniences if they have to stay in China without Chinese nationality and Hukou. Their situation will have to depend on Chinese laws and policies concerning foreigners, which are amended and updated from time to time.

We can also imagine that, when the children grow up, they would not be able to freely choose their career like people with Chinese nationality, but have to apply for Work Permit first, and would be excluded from the careers which require Chinese nationality.

Further, it should be noted that Chinese language, culture and education are quite different from Western Countries like Netherlands. If Ms. [redacted] s children grow up and receive education in China, it would be difficult for them to go back to their own country and study/work there when they want.



### III. Conclusion

Ms. 's two children shall be allowed to stay in China with their Chinese mother according to Chinese law. It is possible for them to apply for Permanent Residence Permit. However, if they are not granted Permanent Residence Permit, they would have to extend their visa "L" from time to time.

The children would face various disadvantages during their staying in China as Dutchmen.

In regard to education, since they do not have Chinese Hukou, they would be treated as foreign students or Borrowing School Students. They would have to pay more fees and are limited to the schools qualified to have foreign students. They would not be allowed to go to school/university by normal channel like other students, but have to apply as foreigners.

China does not have systematic medical security for children and the two children in the present case are not qualified to join Mutual Assistance Fund on Hospital Cost of Shanghai since they do not have Shanghai Hukou.

The two children and the family are excluded from all and every preferences or priorities provided to one-child family.

They would also face other unforeseeable disadvantages and inconveniences if they live in China and their situation would depend on Chinese laws and policies concerning foreigners, which are amended and updated from time to time.

Dear Michel, I hope the above answered your questions. please feel free to contact us if you need any clarification.

Best regards,

Linda Liang

Encl.