

## Annex A

See -----Original Message-----

**From:** [REDACTED]  
**Sent:** 05 July 2005 17:54  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Children of Gurkhas from Hong Kong

[REDACTED],

Just thought I'd send you a quick email to let you know I've had a few enquiries from Hong Kong born children of Gurkhas who are BN(O)s. It is possible therefore that you will start to see a number of applications from these individuals to register under the 1997 Hong Kong Act. Their situation is really no different to that of any other EM in Hong Kong and as far as I can tell no special consideration needs to be given to these cases. In terms of how many we could expect to apply I have no clear idea - but I understand that there are ~500 currently in the UK who may be considering applying as their leave to remain /enter dries.

Although these individuals will have been dual Nepalese/BN(O) citizens while children, Nepalese citizenship law does not allow for dual citizenship beyond 21 years of age, therefore if they have not renounced BN(O) by the age of 21 they will have become mono- BN(O)s on that date.

Please find attached a letter that was sent to the [REDACTED] [REDACTED] which gives you an idea of the sort of questions they've been asking and the advice I have given them.

[REDACTED] [REDACTED] - I've just copied you in to let you know what sort of work may be coming our way.

[REDACTED]  
[REDACTED]  
Tel: [REDACTED]

Dear [REDACTED]

**BRITISH NATIONAL (OVERSEAS) - CHILDREN OF GURKHAS IN HONG KONG**

Thank you for your letter of 21 June regarding British citizenship for British Nationals (Overseas) (BN(O)s) who are the children of Gurkha soldiers.

Under British nationality law there are two provisions that give an entitlement for BN(O)s to register as British citizens.

Firstly for those BN(O)s who have had 5 years lawful residence in the UK it may be possible to register under Section 4(2) of the British Nationality Act 1981. Please find enclosed the Guide B(OTA) which provides further details on the criteria that must be met in order to be registered under this provision. You will note that there is no requirement under this provision for BN(O)s to hold no other nationality, so those British nationals who are dual citizens could apply under this provision..

Secondly, the British Nationality (Hong Kong) Act 1997 provides that those BN(O)s who are ordinarily resident in Hong Kong (both on the date of application and immediately 4 February 1997) and who hold no other citizenship but BN(O) (on 4 February 1997 or, if BN(O) status was obtained after that date, whatever date BN(O) status was acquired on). Please find enclosed a copy of our Guide EM, which explains the requirements for registration under this provision more fully, in particular how we would determine whether an applicant can meet the "ordinarily resident in Hong Kong" criteria.

With respect to your particular question about the proof we would require to show that an applicant does not hold Nepalese citizenship, it is clear from Section 9(2) of the Nepalese Citizenship Act 1964 that anyone who is a dual Nepalese citizen by birth will automatically lose their Nepali citizenship when they reach the age of 21 if they have not renounced their other citizenship. Therefore it would be sufficient for our purposes for an applicant to provide evidence that they are over 21 and hold BN(O) status.

You should note however that where an individual may have a claim to another citizenship in addition to Nepalese (for example where one parent is Nepalese but the other parent holds a different nationality) we may require evidence that the applicant does not hold this additional citizenship.

Finally, you have asked that all those BN(O)s in the UK with pending applications for British citizenship be permitted to remain in the UK whilst their applications are being considered. I am afraid that I

cannot give such a guarantee - nationality legislation doesn't give a person a right to remain in the UK while their application for naturalisation is being considered. As BN(O)s have no right of residence in the UK only those with valid leave to enter or remain in the UK under the Immigration Rules would be precluded from enforcement application whilst awaiting an outcome on a naturalisation application.

Yours sincerely



Policy adviser