

Hong Kong's top court rejects domestic helpers' appeal for permanent residency

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Campaigners for the rights of foreign helpers at the High Court in March, 2013. Photo: SCMP

The city's top court ruled on Monday morning that foreign domestic helpers do not, as a class, enjoy the right to apply for permanent residency because their residence in Hong Kong is highly restricted.

“The FDH (foreign domestic helper) is obliged to return to the country of origin at the end of the contract and is told from the outset that admission is not for the purposes of settlement and that dependants cannot be brought to reside in Hong Kong,” the Court of Final Appeal said in a written judgement.

The court also rejected the Hong Kong government's request to seek an interpretation from Beijing, saying it was not necessary because the court had reached a conclusion by reading the Basic Law alone without the need to refer to an earlier interpretation in 1999.

The Leung Chun-ying administration had asked the top court to seek an interpretation from Beijing to clarify the meaning of an earlier interpretation of the Basic Law article which sets out what persons are qualified for permanent residency.

The judgment ends the right of abode saga started by a judicial review sought by Evangeline Vallejos Banao, a mother of five, who has worked in Hong Kong since 1986. She had argued that an immigration provision barring domestic workers from permanent residency was unconstitutional.

Mark Daly, a lawyer for Vallejos, said his client was “speechless but calmly resigned and said ‘no problem’”.

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Eman Villanueva, spokesman for the Asian Migrants' Coordinating Body

South China Morning Post 南華早報

<http://www.scmp.com/news/hong-kong/article/1199312/hong-kongs-top-court-rejects-domestic-helpers-appeal-permanent>

Vallejos won a High Court ruling in 2011 granting her the right to request permanent residency status, denied to the city's 300,000 foreign maids until then. The decision however was overturned later on a government appeal.

Labour rights activists had hailed the ruling as a big step for equal rights for maids, who are a backbone of society in richer Asian economies and a financial lifeline to their home nations, notably the Philippines and Indonesia.

But the Court of Final Appeal sided with an appeal lodged by the Hong Kong government, which warned that the ruling would swamp the cramped city's population of seven million.

Monday's ruling means that maids will continue to be specifically excluded from eligibility to settle in Hong Kong, which would give them access to voting rights and the right to reside without a work visa.

“With the court's ruling...it gave its judicial seal to unfair treatment and the social exclusion of foreign domestic workers in Hong Kong,” Eman Villanueva, spokesman for the Asian Migrants' Coordinating Body, said outside the court.

Hong Kong's foreign maids receive a minimum wage of HK\$3,920 a month and benefits such as one guaranteed day off per week, but rights groups say they face discrimination and a lack of legal protection from abusive employers.

Foreigners can apply to settle in Hong Kong after seven years of uninterrupted residency, gaining access to voting rights and the right to live in the city without a work visa. Maids were specifically excluded.

That was the case regarding a long-running legal question about children of Hong Kong permanent residents from mainland China, which like the foreign maids case had created anxiety over the potential strain on the city.