

5 January 2015

**Submission in Preparation for a Meeting with the Director of Immigration
19 January 2016 at LegCo Room 506**

Hosted by: The Honorable Ms Emily Lau

Introduction:

PathFinders thanks The Hon. Ms. Emily Lau for organizing the above meeting and expresses its appreciation to the Director of Immigration for taking the time to discuss and consider some of the Immigration-related issues impacting foreign domestic workers (“FDWs”).

PathFinders works to ensure that the most vulnerable children born in Hong Kong, and their migrant mothers, are respected and protected. We assist migrant workers, mainly FDWs, in Hong Kong who are pregnant or have given birth in Hong Kong.

For information about PathFinders, please visit our website at www.pathfinders.org.hk/public.

Please also see our November 2015 submission to the Hong Kong Ombudsman regarding unregistered births in Hong Kong: <http://www.pathfinders.org.hk/public/wp-content/uploads/PathFinders-November-2015-18-Ombudsman-Investigation-Unregd-Babies-FINAL-PDF.pdf>

One important suggestion is for the Immigration Department (“ID”) (short of lengthy policy reviews/amendments), to have some ‘preferred/best practice’ notes available to the public for dealing with the ID. This would quickly and significantly improve the sometimes unpredictable outcomes of meetings at the ID. For example, a specific day(s) for serving minority language groups where translators are available.

What follows below are 9 points PathFinders would welcome clarification on and/or further discussion about.

Thank you in advance for considering this submission.

PathFinders welcomes clarification on and/or further discussion about the following points:

1. Birth Registry

- 1.1 **Birth Registry Fee Waivers:** Is it correct that the fees for obtaining a birth certificate can be waived if a Social Welfare Department (“SWD”)-issued waiver is provided? If so, how is this information being communicated to birth certificate applicants? From PathFinders’ experience the public is not generally aware of this mechanism;
- 1.2 **Copy of Own Statutory Declaration:** Some Pathfinders’ clients need to obtain from the Birth Registry a copy of the statutory declaration they themselves made at the time they registered their child’s birth. This has proved difficult. The Birth Registry’s explanation is that PathFinders’ client’s statutory declaration is government property and contains personal data which the Birth Registry cannot release. Then PathFinders’ client resorts to making a formal ‘Access to Information’ request to obtain a copy of her own document – however, once produced, the data in the copied declaration document is heavily redacted, often with the father’s and child’s information obscured entirely. This is clearly impractical and unhelpful. Is there a mechanism in place to obtain a clean and complete copy of one’s own birth certificate statutory declaration?
- 1.3 **DNA Testing of Mothers:** In cases when the birth is registered late, some of PathFinders’ mothers are asked to undergo DNA testing. Are guidelines available setting out the circumstances in which a DNA test of the mother is required? When such a DNA test is required, is any financial assistance available if the mother cannot afford it?
- 1.4 **DNA Testing of Fathers:** In a particular case, the Hong Kong Permanent Resident (“HKPR”) father of a child was required by the Birth Registry to undergo a DNA test to prove his paternity. The mother of the child was an unmarried women. The parents were informed by the Birth Registry that a DNA test was required because right of abode could be later claimed by the mother. Is it ID’s standard practice/policy to require every HKPR father of a child (where the mother is unmarried) to undergo a DNA test?
- 1.5 **Delayed Birth Returns:** In Pathfinder’s experience, Hong Kong’s public hospitals sometimes delay sending the birth return to the Birth Registry if the hospital bill remains unpaid (the reasons the medical bills are both levied and unpaid are complex. In brief, they arise because of the employer unlawfully firing the pregnant FDW which criminal act causes the FDW to lose all public medical and welfare access and assistance). Meanwhile, the child remains undocumented, has no access to public health care and cannot obtain travel documents. Would it be possible to establish a protocol where the mother could obtain, free of charge, a printed copy of the “birth return” which could then serve as an interim birth certificate for the purpose of ensuring the

child has an identity and is able to receive early life medical interventions and immunisations, as for any other child born in Hong Kong?

2. Marriage Registry

2.1. **Marriage and Divorce Documentation:** Unlike in Hong Kong, in the sending countries of Hong Kong's FDWs both marriage and divorce, while religiously acknowledged, are not commonly documented either rigorously or at all. In many cases, our clients are unable to provide the Marriage Registry with documentary evidence of marriage or divorce. Given that the practice is so varied, could a statutory declaration or notarised statement evidencing the marriage/divorce be accepted instead?

3. Unified Screening Mechanism (“USM”) screening and related issues

3.1 **Removal Orders:** Some PathFinders' clients have their USM claim rejected, but may not be immediately removed from Hong Kong – in some cases this can be for several years. This significantly impact on our clients and, indeed, on PathFinders own resource planning. We would like to understand more about under what circumstances a Removal Order will be issued, stayed and executed.

3.2 **“CZ” Status:** Once a claimant has made a USM application, they have access to medical health care and International Social Services (“ISS”) benefits. However, public hospitals will not allow claimants to make appointments or register for services unless the letters “CZ” are included on the recognizance paper reference. In Pathfinders' experience recognizance papers do not always include the letters “CZ” and it can take several months for updated recognizance papers to be issued. Would it be possible for ID to issue recognizance papers with “CZ” as soon as they receive the claim to minimize delays? Alternatively, would ID be willing to provide USM claimants with a letter confirming their status as a USM claimant?

3.3 **Children Born to USM Claimants:** Registering the birth of a child born to a USM claimant is often delayed for two to three months. Unregistered during this crucial new-born phase, the baby is denied access to public health care and ISS benefits. Prioritising the best interests of the child, can ID assist and expedite the transfer of the birth information to the Birth Registry?

4. Surrendering to Immigration by FDW Over Stayers

4.1 **Refusal of Surrender:** Under what circumstances does ID refuse to allow a person to surrender after her visa has expired? In several PathFinders' cases, ID has refused to allow PathFinders' clients to surrender. Reasons given include:

- (i) The client does not have the money to obtain photocopies of her identity documents and to provide a passport photo;
- (ii) The client does not have a ticket to return to her home country;

- (iii) The client does not have originals and/or copies of her HKID and/or passport; and
- (iv) It is too late and client should come again the next working day.

4.2 Decision to Prosecute Over Stayers: Under what circumstances does ID decide not to prosecute over stayers? Can we see a written policy, if any?

4.3 Fee Waivers for Visa Extensions: Many PathFinders' clients are obliged to remain in Hong Kong to obtain documents for their children, to answer police investigations and/or to pursue legal claims. As a result, they have to repeatedly renew or extend their visas at a cost of \$190 each time. However, there are unable to work and have no income. Would ID consider granting visa fee waivers for those who have significant legal and other matters in progress and are required to remain in Hong Kong and/or who cannot realistically return home?

5. Immigration Status

5.1 Employment Visa: Employers can either online or by faxing a form to ID to notify ID that they have terminated the employment of their FDW, without informing the FDW herself. As such, the FDW is not aware of her new immigration status. Some of PathFinder's clients, especially those on maternity or sick leave, are unsure about the validity of their employment visa. There is no practical system in place to access to information on the validity of a visa. Would ID consider implementing an online system where a person can check their visa status? Such an online system is available in Singapore: http://www.visafirst.com/visa_status_info.asp

5.2 Dependant Visa: When an over stayer, married to a HK Resident, applies for a dependant visa, she or he is required to provide a valid passport. In a case where the passport of Pathfinder's Indonesian client was expired, the Indonesian consulate requested to see the dependant visa first in order to issue a new passport. This is not an isolated case. Is there a protocol in place between Immigration Department and Consulates to assist in these cases?

5.3 Permission to Remain: Are the "best interest of the child" (art. 3 UN Convention on the Rights of the Child) and "family life of the child" (art.8.1 UN Convention on the Rights of the Child) taken into consideration when assessing a request for permission to remain filed by a parent of a HK resident child? If so, what guidelines are in place to assess these elements and may we have a copy?

6. Statistics

6.1 PathFinders requested statistics from ID and was advised (on 30 September regarding items A,B,C and on 9 June 2015 regarding item D below) that ID does not possess data about:

- A. the number of babies born to FDWs and/or recognizance paper holders for which the Immigration Department received a Birth Return;

- B. the number of babies born to FDWs and/or recognizance paper holders for which the Immigration Department did not receive a Birth Return;
- C. the number of babies born to FDWs and/or recognizance paper holders for which the Immigration Department received a Birth Return but did not issue a birth certificate; and
- D. the number of FDWs who have surrendered to the Immigration Department.

Please would ID consider gathering statistics on the above and making them public? PathFinders' cases went up a dramatic 29% in 2015 and we, as well as SWD and the Hong Kong government, need to understand better the numbers and trends affecting the babies, children and mothers we serve.

7. Attitude

7.1. There is generally in Hong Kong a lack of respect, societal understanding and support of FDWs' rights. ID staff can also be insensitive, ignorant or unable to respond accurately and in a culturally sensitive and language-appropriate manner, to FDWs' requests. Front line workers often turn away FDWs who are entitled to receive services or make it difficult for them to understand the process to obtain services. We recommend training for front line workers including officers working in the Border Control, Visa Extensions, Removal, and Investigation Sections of ID.

8. "Live-in" Rule and Pregnant/Post-Natal FDWs

8.1 Under section 12 of the Employment Ordinance (Cap. 57), a FDW is entitled to maternity leave as is any other eligible female employee;

8.2 However, clause 3 of the Employment Contract (For a Domestic Helper recruited from Abroad [*a reference to ID407*] ("Contract")) sets out that a FDW is required to work and reside in the employer's residence during his/her employment. The Contract is silent as to the live-in rule and how it should be applied/not in relation to maternity (and indeed to all other) statutory leaves;

8.3 The requirements of 8.1 and 8.2 above appear to conflict.

8.4 We request ID's guidance as to whether a newborn baby and post-natal mother are required to live in the employer's home while the FDW is on her statutory maternity leave and, if so, on what basis since this would put both mother and child in harm's way and also significantly inconvenience most employers of FDWs. No other post-natal mothers in Hong Kong are required to live in their workplace; and

8.5 PathFinders requests that ID (collaborating with the Labour Department, as appropriate), do provide and publicise guidelines to assist employers and FDWs with regard to the proper, safe and healthy management of a FDW's pregnancy and maternity.

9. Trafficking

9.1 **Child Trafficking:** PathFinders recommends that child anti-trafficking measures are imposed at ID itself and at all HKSAR entry and egress points. Also requiring additional certification to prove that every child travelling is indeed accompanied by a parent or other properly authorized person. This is especially important in Hong Kong where children do not necessarily carry the same family name as their mother. It is currently alarmingly easy to leave Hong Kong with a child that is not yours and/or does not carry your name.