

J. Y. Interpretation No.497 (December 3, 1999) \*

**ISSUE:** Is the regulation enacted by the Ministry of the Interior constitutional in specifying the qualifications, conditions, permission procedure, and length of stay for people from mainland China who apply for entry into the Taiwan area?

**RELEVANT LAWS:**

Article 23 of the Constitution (憲法第二十三條); Article 11 of the Amendment of the Constitution (憲法增修條文第十一條); Articles 10, 17 and 18 of the Act Governing Relations between People of the Taiwan Area and Mainland Area (臺灣地區與大陸地區人民關係條例第十條、第十七條、第十八條) .

**KEYWORDS:**

freedom of residence (居住自由), prevent infringement upon the freedoms of other persons (防止妨害他人自由), to avert imminent crisis (避免緊急危難), to maintain social order (維持社會秩序), to advance public welfare (增進公共利益) .\*\*

**HOLDING:** The Act Governing Relations between People of the Taiwan Area and Mainland Area (hereinafter the”

**解釋文：**中華民國八十一年七月三十一日公布之臺灣地區與大陸地區人民關係條例係依據八十年五月一日公

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\* Translated by Professor Fuldien Li.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

Act”), promulgated on July 31, 1992, is enacted in accordance with Article 10 of the Amendment to the Constitution promulgated on May 1, 1991 (presently Article 11 of the prevailing Amendment to the Constitution), which states: “Rights and obligations between the people of the Chinese mainland area and those of the free area, and the disposition of other related affairs may be specified by law.” It is a special law governing the rights and obligations between the peoples of the Taiwan area and the Mainland area prior to the reunification of the nation. As authorized by Articles 10 and 17 of the Act, the Ministry of the Interior has enacted the Regulation Governing the Approval of Entry of People from the Mainland Area Into the Taiwan Area and the Regulation Governing the Approval of Permanent or Temporary Residence for the People from the Mainland Area, which Regulations stipulate the qualifications, conditions, permission procedure and length of stay concerning the entry of said people into the Taiwan area, are to protect the security and welfare of the people of the Taiwan area, and are in accordance with the legis-

布之憲法增修條文第十條（現行增修條文改列為第十一條）「自由地區與大陸地區間人民權利義務關係及其他事務之處理，得以法律為特別之規定」所制定，為國家統一前規範臺灣地區與大陸地區間人民權利義務之特別立法。內政部依該條例第十條及第十七條之授權分別訂定「大陸地區人民進入臺灣地區許可辦法」及「大陸地區人民在臺灣地區定居或居留許可辦法」，明文規定大陸地區人民進入臺灣地區之資格要件、許可程序及停留期限，係在確保臺灣地區安全與民眾福祉，符合該條例之立法意旨，尚未逾越母法之授權範圍，為維持社會秩序或增進公共利益所必要，與上揭憲法增修條文無違，於憲法第二十三條之規定亦無牴觸。

lative purpose of the Act. It is essential to maintain the social order and to advance the public welfare; hence, such Regulations conform to the aforesaid Article of the Amendments to the Constitution, are within the scope of the delegation by such Act and are not in violation of said Amendment and Article 23 of the Constitution.

**REASONING:** Although Article 10 of the Constitution stipulates that the people shall have freedom of residence and change of residence, such freedoms may be restricted by law in order to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain the social order or to advance the public welfare pursuant to Article 23 thereof. In addition, Article 10 of the Amendment to the Constitution, promulgated on May 1, 1991 (presently Article 11 of the prevailing Amendment to the Constitution) states: “Rights and obligations between the people of the Chinese mainland area and those of the free area, and the disposition of other related affairs may be specified by law.” Promulgated on

**解釋理由書：**人民有居住遷徙之自由，固為憲法第十條所保障，惟為防止妨礙他人自由、避免緊急危難、維持社會秩序或增進公共利益之必要，得以法律限制之，憲法第二十三條亦有明文。又八十年五月一日公布之憲法增修條文第十條（現行增修條文改列為第十一條）規定：「自由地區與大陸地區間人民權利義務關係及其他事務之處理，得以法律為特別之規定。」八十一年七月三十一日公布之臺灣地區與大陸地區人民關係條例係依上開增修條文所制定，為國家統一前確保臺灣地區安全與民眾福祉，規範臺灣地區與大陸地區人民間權利義務之特別立法。再者，法律授權訂定命令，如涉及限制人民之自由權利時，其授權之目的、範圍及內容固須符合具體明確之要件；若法律僅為概

July 31, 1992, the Act Governing Relations between People of the Taiwan Area and Mainland Area has been enacted in accordance with said Article 10. It is a special law governing the rights and obligations between the peoples of the Taiwan area and the Mainland area to ensure the security and public welfare of the Taiwan area before the reunification of the nation. If delegation by the legislative to the executive branch to implement the law by ordinance concerns the freedoms and rights of the people, the purpose, scope and content of such delegation should be explicit and concrete. If the legislature only makes a general delegation, construction of the legislative intent should be made from the related meanings of the entirety of the law, not being restricted by the respective characters in the specific provision of law (See Interpretation No. 394). According to said Article 10, “Unless permission is granted by the competent authority, no people of the Mainland area may enter the Taiwan area. (Paragraph 1)”; “People of the Mainland area who have entered the Taiwan area by permission may not engage in any activity

括授權時，則應就該項法律整體所表現之關聯意義以推知立法者授權之意旨，而非拘泥於特定法條之文字（參照本院釋字第三九四號解釋）。內政部依該條例第十條「大陸地區人民非經主管機關許可，不得進入臺灣地區」（第一項）、「經許可進入臺灣地區之大陸地區人民，不得從事與許可目的不符之活動或工作」（第二項）、「前二項許可辦法，由有關主管機關擬訂，報請行政院核定後發布之」（第三項），第十七條第一項「大陸地區人民有左列情形之一者，得申請在臺灣地區居留：一、臺灣地區人民之配偶，結婚已滿二年或已生產子女者。二、其他基於政治、經濟、社會、教育、科技或文化之考量，經主管機關認為確有必要者」，同條第七項（現行條文為第八項）「前條及第一項申請定居或居留之許可辦法，由內政部會同有關機關擬訂，報請行政院核定後發布之」，及同條例第十八條第一項第二款，進入臺灣地區之大陸地區人民，經許可入境，已逾停留期限者，治安機關得逕行強制出境等規定，於八十二年二月八日以內政部臺（八二）內警字第八二七三四六六號令發布「大陸地區人民進入臺灣地區許可辦法」、臺（八二）內警字第八二七三四五九號令

or take up any job inconsistent with the purposes for which the permission was granted. (Paragraph 2)”; “Rules governing the granting of the permission, referred to in the two preceding paragraphs of this Article, shall be formulated by the competent authorities concerned and promulgated after approval by the Executive Yuan. (Paragraph 3)”; Article 17, Paragraph 1, “In any of the following situations, any people of the Mainland area may apply for residency in the Taiwan area: 1. Being the spouse of any citizen of the Taiwan area and married for two years or more or having given birth to a child or children. 2. Residency being deemed truly necessary by the competent authorities of our political, economic, social, educational, scientific, technological or cultural consideration”; Paragraph 7 (now Article 17, Paragraph 8), “Rules governing the granting of permission for residency or permanent residency, referred to in the immediately preceding Article and Paragraph 1 of this Article, shall be formulated, respectively, by the Ministry of Interior in conjunction with the competent authorities concerned and promulgated

發布「大陸地區人民在臺灣地區定居或居留許可辦法」，明文規定大陸地區人民進入臺灣地區之資格要件、許可程序、定居或停留期限及逾期停留之處分等規定，符合該條例之立法意旨，尚未逾越母法之授權範圍，為維持社會秩序或增進公共利益所必要，與上揭憲法增修條文無違，於憲法第二十三條之規定亦無牴觸。

after approval by the Executive Yuan.”, and Article 18, Paragraph 1, Subparagraph 2, any people of the Mainland area who entered the Taiwan area may be deported therefrom by the police and the security authorities if such people have entered the Taiwan area by permission but stayed beyond the authorized duration. On February 8, 1993, the Ministry of the Interior in Tai- (82)-Interior-Police- No.-8273466 promulgated the Regulation Governing the Approval of Entry of People from the Mainland Area Into the Taiwan Area and in Tai- (82)-Interior-Police-No.-8273459, the Regulation Governing the Approval of Permanent or Temporary Residence for the People from the Mainland Area, wherein the qualifications, conditions, permission procedure and length of stay concerning the entry of the people of the Mainland area into the Taiwan area are clearly set forth. Essential to maintain the social order and to advance the public welfare, these regulations are to protect the security and welfare of the people of the Taiwan area. They conform to the legislative intent of the aforesaid Act and are within the scope of the

delegation. Therefore, the above regulations are not in violation of the Amendment and Article 23 of the Constitution.