

J. Y. Interpretation No.172 (December 18, 1981) *

ISSUE: Is there any conflict with the Constitution when the Regulation for the Correction of Birth Date on the Household Registration Record provides that the so-called other satisfactory credentials shall be limited to those believable original credentials?

RELEVANT LAWS:

Articles 15, 18, and 172 of the Constitution (憲法第十五條、第十八條及第一百七十二條) ; Article 7 of the Standard Act for the Laws and Rules (中央法規標準法第七條) ; Article 36 of the Household Registration Act (戶籍法第三十六條) ; Article 19, Paragraph 1, Subparagraph 14 of the Enforcement Rules of the Household Registration Act (戶籍法施行細則第十九條第一項第十四款) ; Article 3, Paragraph 1, Subparagraph 6 and Paragraph 2, of the Regulation for the Correction of Birth Date on Household Registration Record (更正戶籍登記出生年月日辦法第三條第一項第六款、第二項) .

KEYWORDS:

right to work (工作權) , right to hold public office (服公職權) , application for correction of the household registration record (戶籍登記更正之申請) , original credentials (原始證件) , due exercise of authority (職權之正當行使) .**

* Translated by Jer -Shenq Shieh.

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HOLDING: Article 3, Paragraph 1, Subparagraph 6 and Paragraph 2, of the Regulation for the Correction of Birth Date on Household Registration Record issued by the Ministry of the Interior provide that the so-called other satisfactory credentials, which have been submitted for applying for correction of the birth date on the household registration record, shall be limited to those believable original credentials. The above-mentioned provision is for the purpose of achieving the preciseness of the correction, not going beyond the legal authority of the Ministry of the Interior. This provision does not infringe upon people's right to work and right to hold public office which are guaranteed by the Constitution as well, and therefore there is no conflict with the Constitution.

REASONING: For Article 172 of the Constitution provides: "Regulations that are in conflict with the what kind of credentials should be submitted and Constitution or with statutes shall be null and void," and Article 7 of the Standard Act for the Laws and Rules also provides

解釋文：內政部令頒「更正戶籍登記出生年月日辦法」第三條第一項第六款及同條第二項，申請更正戶籍登記之出生年月日所提出之其他足資證明文件，以可資採信之原始證件為限之規定，旨在求更正之正確，並未逾越內政部法定職權，對憲法所保障人民之工作權及服公職之權，亦無侵害，尚難謂為與憲法有何牴觸。

解釋理由書：按憲法第一百七十二條規定：「命令與憲法或法律牴觸者無效。」又中央法規標準法第七條規定：各機關依其法定職權或基於法律授權，得訂定命令，並於發布後，即送立法院。是各機關發布之命令，於不牴觸憲法或法律及不侵害人民權利之範圍

that every administrative agency, according to its legal authority or based upon the delegation of the statutes, may set up the regulations and after the issuance of these regulations, shall immediately delivery them to the Legislative Yuan, the issuance of regulations by every administrative agency, except for the issuance of those being in conflict with the Constitution or infringing upon people's rights, is within the due exercise of its authority. Article 36 of the Household Registration Act only provides that if there is any mistake or omission in the household registration record, it shall be corrected, and also Article 19, Paragraph 1, Subparagraph 14 of the Enforcement Rules of the Household Registration Act only provides: "In reference to the correction of the record, if it is not a mistake derived from the process of keeping the record, the applicant shall submit credentials at the time the application is made." As for would be believable when a person applies for correction of the birth date on the household registration record, it is not provided by the Act. The Ministry of the Interior in the Central Government is the authority concerned

內，即屬其職權之正當行使。戶籍法第三十六條僅規定，戶籍登記事項有錯誤或脫漏時，應為更正之登記，戶籍法施行細則第十九條第一項第十四款亦僅定：更正登記，非過錄錯誤者，申請人應於申請時提出證明文件。至人民申請更正戶籍出生年月日之登記，究應提出何種證明文件，方可採信，法律未設規定，內政部係戶籍行政之中央主管機關，為求全國戶政機關處理此類事件之正確，乃頒訂更正戶籍登記出生年月日辦法，並於民國六十五年二月十六日及六十七年五月十二日先後修正發布時，均經報行政院核備並送請立法院查照。其第三條第一項第六款及同條第二項所定。申請更正戶籍登記之出生年月日提出之其他足資證明文件，以經該管戶政事務所主任查明屬實，足以確定其戶籍登記出生年月日確屬錯誤，可資採信之原始證件為限，旨在求其更正之正確，並未逾越內政部法定職權範圍，係屬行政權之正當行使；對於憲法所保障人民之工作權及服公職之權，亦無所侵害，尚難謂為與憲法有何牴觸。

with the administration of the household registration, and in order to make all the household administrative agencies throughout the country deal precisely with similar cases, the Ministry set up and issued the Regulation for the Correction of Birth Date on Household Registration Record. In addition, the Regulation was reported to the Executive Yuan for examination and delivered to the Legislative Yuan for reference when it was amended and promulgated both on February 16, 1976, and on May 12, 1978. According to Article 3, Paragraph, Subparagraph 6 and Paragraph 2, of the Regulation, the so-called other satisfactory credentials, which have been submitted for applying for correction of the birth date on the household registration record, shall be limited to those believable original credentials, which shall have been examined and deemed to be true by the director of the household administration office and shall be sufficient to confirm there actually being a mistake in the birth date on the household registration record. The above-mentioned provision is for the purpose of achieving the preciseness of the

correction, not going beyond the legal authority of the Ministry of the Interior, and is within the due exercise of the administrative authority; this provision does not infringe upon people's right to work and right to hold public office which are guaranteed by the Constitution as well, and therefore there is no conflict with the Constitution.