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CBP Headquarters
Deputy Commissioner
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Feb. 6, 2013

Dear Deputy Commissioner,

Allow me to introduce myself as a legal researcher currently settled in Taiwan, with a Ph.D. in international law from Meijo University, Nagoya, Japan. My particular area of investigation focuses on the laws of war of the post-Napoleonic period. Some overseas Taiwanese groups in the USA have also expressed much interest in my research, including those lead by a Mr. Nieco Tsai in Los Angeles and a Mr. Te Lin in Washington D.C.

No Legal Basis for Classifying Native Taiwanese Persons as ROC Citizens

I am a native Taiwanese person, and my ancestors were already here when Qing Dynasty China ceded Taiwan to the Empire of Japan in 1895. At the current time I am unable to obtain a passport to travel to the United States, because the government here (which calls itself "Republic of China" and issues passports under the nomenclature of the "Republic of China") incorrectly classifies me as a "Republic of China" citizen. There is no legal basis for such a classification.

Improper U.S. Government Actions in Supporting the ROC Regime

Here in Taiwan, the treatment that I and my fellow Taiwanese comrades receive is directly related to certain improper U.S. government actions which have continued from April 1979 up to the present day. DHS/CBP is very much involved in this entire

matter. Let me explain as follows.

According to my understanding, the U.S. Executive Branch's treatment of Taiwan is based on a number of important elements, including but not limited to the following: the One China Policy (including the June 1998 Three Noes statement), the 1979 Taiwan Relations Act, the Aug. 1996 Executive Order 13014, the Aug. 30, 2007 National Security Council (NSC) Senior Director for Asian Affairs' announcement, the 2008 (DOS) Mandatory Guidance guidelines, etc.

In my view, the actions of DHS/CBP in continuing to accept "Republic of China" passports as "valid travel documents" to enter the United States of America is a clear and serious violation of all of the above. In other words, nowhere among these orders, laws, guidelines, etc. do we find any legal authorization for the Taiwan governing authorities to issue passports under the nomenclature of "Republic of China" to native Taiwanese persons.

Taiwan Has Never Been Included in the "National Territory" of the ROC

As a fundamental point of reference, I would also point out that in the post -WWII era, the highest ranking legal document in regard to the disposition of Taiwan is the San Francisco Peace Treaty (SFPT) of April 28, 1952. Under the terms of that treaty, Taiwan was NOT ceded to the Republic of China. Accordingly, there is absolutely no basis under international law to classify native Taiwanese persons as "Republic of China" citizens. (Please refer to the Czyzak Memorandum of the U.S. Dept. of State, Feb. 3, 1961)

The words of President Truman, in an Aug. 27, 1950, letter to U.N. Ambassador Warren Austin ring true even up to the present day. President Truman wrote that "The Chinese Government was asked by the Allies to take the surrender of the Japanese forces on the island. That is the reason the Chinese are there now."

Today, Taiwan Remains as "Occupied Territory"

In other words, Taiwan has been under military occupation since the Japanese surrender ceremonies on Oct. 25, 1945. (See Sheng v. Rogers, D.C. Circuit, Oct. 6, 1959). The Republic of China in Taiwan is merely a subordinate occupying power, which then degenerated into a government in exile with the transfer of its central government to occupied Taiwan in Dec. 1949. With reference to the NSC

comments by Dennis Wilder of Aug. 30, 2007, it is clear that there has been no change in this status to date.

Notably, according to the specifications of Article 23(a) of the SFPT, the United States of America is the principal occupying power. This specification must be understood within the scope of territories specified under Article 4(b).

DHS/CBP's Actions Directly Violate Announced U.S. Executive Branch Policies

To re-clarify this, under U.S. law, and in particular the Taiwan Relations Act, there is no country in the world today called "Republic of China." Hence, the continuing acceptance of Republic of China passports as valid travel documents by DHS/CBP amounts to a tacit acceptance of a "Two China Policy," in direct violation of repeated Executive Branch assertions.

The Counterfeiting of Republic of China Passports by ROC-MOFA

Therefore, in light of all the legal reasoning presented above, it can be forcefully argued that the so-called "Ministry of Foreign Affairs of the Republic of China" is counterfeiting passports for use by native Taiwanese persons. Hence, clearly, the so-called "Ministry of Foreign Affairs" of the non-existent "Republic of China" cannot be construed as a competent authority for issuing passports to native Taiwanese persons under INA 101 (a) (30).

The false claims of "citizenship of the Republic of China" for native Taiwanese Persons holding ROC passports should render those passports illegal under U.S. law. I, for one, as a Taiwanese loyalist, view the forcing of native Taiwanese persons to apply for and carry such passports as a serious violation of our human rights. I refuse to apply for such a passport.

Human Rights of the Native Taiwanese People

I cannot understand why U.S. Executive Branch agencies have not taken action on this matter at any time in the past 40 years. Please refer to the Taiwan Relations Act, 22 U.S.C 3301 (c): "Nothing contained in this chapter shall contravene the interest of the United States in human rights, especially with respect to the human rights of all the approximately eighteen million inhabitants of Taiwan. The preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed

as objectives of the United States.”

In summary, it can be seen that acting under his foreign affairs powers, the U.S. President recognized the "Republic of China" as the sole legitimate government of China up to Dec. 31, 1978. However, a thorough review of the historical and legal record fails to find that any U.S. President has ever recognized the "Republic of China" as the legitimate government of Taiwan. Indeed, such a recognition is impossible under the terms of the Senate-ratified SFPT.

Proper and Correct Travel Documents for Native Taiwanese Persons

What travel documents should native Taiwanese persons be holding? According to my research, native Taiwanese persons should be issued “Certificates of Identity (COIs)” by the U.S. military authorities, with the approval of DHS/CBP. This would be similar to the arrangements for native Ryukyu islanders during the period of United States Military Government (USMG) jurisdiction, which ended in May 1972. In the SFPT, the United States of America is designated as the principal occupying power in Article 23(a), and USMG jurisdiction over the Ryukyu islands and Taiwan is affirmed in Article 4(b).

Please see my further explanation of the relevant legal details regarding the issuance of COIs to native Taiwanese persons in my Jan. 21, 2013, Washington Post advertorial. Details are available online at <http://www.taiwandocuments.net/coi-menu.htm>

I would hope that DHS/CBP could accept this Washington Post advertorial as a formal application for issuance of COIs to native Taiwanese persons. I would welcome a reply from DHS/CBP. For your information, over the past five years, I have repeatedly tried to contact the U.S. State Dept. and U.S. Dept. of Justice about this issue. I have received no response. Hence, I now turn to DHS/CBP.

Visa Waiver Program

At the time of this writing, Feb. 2013, the United States’ Visa Waiver Program includes 36 sovereign nations and one non-sovereign nation, i.e. Taiwan.

The issuance of COIs (with embedded electronics) to native Taiwanese persons should be limited to those who are recognized as “Taiwan citizens” under the terms of the “The People of Taiwan Citizenship Rights Act” promulgated by the Taiwan Civil

Government. It would thus be confirmed that all of these persons have unrestricted right of permanent abode on Taiwan and have a personal identification (household registration) number.

This should not affect application of Section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, whereby the Secretary of Homeland Security, in consultation with the Secretary of State, designates certain countries as Visa Waiver Program (VWP) countries if certain requirements are met. Taiwan was designated as a VWP country as of beginning November 1, 2012. However, the continuing use of the "Republic of China" passport is, as explained above, both totally inappropriate and (arguably) quite illegal.

Sincerely,

/s/

Roger C. S. Lin
Secretary General, TCG

DOB: Aug. 6, 1950

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