

INTERPRETING "SETTLED ABROAD" IN CHINA'S NATIONALITY
LAW: THEORY, PRACTICE, AND PROBLEMS

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The globalization of China and active international migration across Chinese borders involving millions of people have made understanding Chinese nationality law an issue of tremendous importance. In recent years, disputes concerning nationality have arisen out of undefined terms in the Nationality Law. At the center is the term "settled abroad," which impacts the nationality of those who acquire foreign nationality and children born to overseas Chinese citizens. The limited literature and legislative interpretations do not clearly define the term. A thorough analysis shows that "settled abroad" means permanent or long-term residency and generally does not scrutinize the length of the actual residence period except for a complete absence of actual residence or undocumented migration. This Note further examines all publicly available cases disputing nationality in the past seven years to understand the judicial practice. It turns out Chinese courts also refrain from inquiring about the actual residence period in non-criminal cases. In recent years, the sensitive nature of the issue and the discoordination among authorities have prevented amendment or interpretation of the nationality law.

This Note makes two key contributions to the literature. First, it provides a much-needed interpretation of the key provisions in Nationality Law that have profound implications for millions of people. In contrast to prior literature, which often lacks sufficient comparison and analysis, this Note addresses all prior discussions in a comprehensive way. Second, it is the first work that applies empirical methods to examine how Chinese courts apply the Nationality Law. Finally, this Note also offers several explanations for the stagnant amendment of the Nationality Law from a policy angle.

Keywords: China, Nationality law, Statutory interpretation, Settled abroad, Chinese courts, Empirical methods

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INTRODUCTION

China adopts the position of denying dual nationality in its 1980 Nationality Law. In particular, the term “settled abroad” controls two key provisions effectuating the denial of dual nationality. Article 5 provides that a child born abroad by Chinese nationals will have Chinese nationality only if one of his Chinese parents is “settled abroad.” Under Article 9, Chinese nationals will lose their Chinese nationality upon voluntary acquisition of foreign nationality only if they are “settled abroad.” Despite the term’s significance, 40 years after the law’s promulgation, “settled abroad” remains undefined in Chinese law. This legal ambiguity has led to much trouble for overseas Chinese, ethnic Chinese with foreign nationality, and foreign nationals in China. This Note seeks to define “settled abroad” precisely and explore the Nationality Law’s problems, as well as their solutions in a broader context.

Part I summarizes three main approaches taken by regulators and scholars to interpreting the term “settled abroad”: that it requires a combination of both permanent or long-term resident status and actual residence in foreign countries per a definition in a 2009 regulation enacted by the Overseas Chinese Affairs Office; that it only refers to the right of permanent or long-term residency; or that either of the two is sufficient. A thorough investigation of legislative materials, executive regulations, and scholarly work reveals that the first and third approaches are problematic since they cause more nationality conflicts. As a result, the term “settled abroad” should only require permanent or long-term resident status, subject to limited exceptions such as the absence of actual residence and undocumented migration.

Part II conducts an empirical analysis of how Chinese courts deal with the undefined term “settled abroad” and other related nationality law issues, drawing on 81 cases publicly available regarding Article 9 of the Nationality Law. This analysis reveals that most courts do not review the element of “settled abroad” at all in civil and administrative cases. Instead, Chinese courts treat any acquisition of foreign nationality as the basis for loss of Chinese nationality. The phenomenon of concealing the acquisition of foreign nationality and retaining local citizenship proof, coupled with special procedural protections under Chinese law in foreign-related cases, leads to the widespread opportunistic use of concealed foreign nationality to have a second day in courts. Finally, in order to minimize procedural safeguards and consular assistance available to a foreign national, criminal courts, in their attempts to deny foreign nationality in criminal cases, are much more aggressive in scrutinizing the “settled abroad” element.

The right to nationality is a fundamental human right widely acknowledged in today's world.¹ The issue is particularly relevant to states with large migrant populations, such as China. According to the International Organization of Migration, China is the fourth largest origin country of international emigrants, with about ten million people born in China living abroad.² China was the origin of the second largest number of immigrants to the US in 2019, and nearly 3 million Chinese-born emigrants resided in the US at the time.³ Nationality is also a necessary prerequisite for foreign embassies and consulates to provide diplomatic protection or consular assistance to nationals in China.⁴ Unsurprisingly, the arrest and detention of a Chinese national who has acquired foreign nationality have led to confrontations between Chinese and foreign governments on numerous occasions.⁵

¹ International Covenant on Civil and Political Rights art. 24(3), Dec. 19, 1966, 999 U.N.T.S. 171 (“Every child has the right to acquire a nationality.”); G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 15 (Dec. 10, 1948) (“Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”); David Owen, *On the Right to Have Nationality Rights: Statelessness, Citizenship and Human Rights*, 65 NETH. INT’L L. REV. 299, 302 (2018).

² International Organization for Migration, *World Migration Report 2022*, INTERNATIONAL ORGANIZATION FOR MIGRATION (Dec. 1, 2021), at 25, <https://publications.iom.int/books/world-migration-report-2022>.

³ International Organization for Migration, *World Migration Report 2020*, INTERNATIONAL ORGANIZATION FOR MIGRATION (Nov. 27, 2019), at 70, 111, <https://worldmigrationreport.iom.int/wmr-2020-interactive/>.

⁴ International Law Commission, *Draft Articles on Diplomatic Protection with Commentaries*, U.N. Doc. A/61/10, at 35, art. 5(1) (2006); Vienna Convention on Consular Relations, Apr. 24, 1963, 596 U.N.T.S. 261, art. 36.

⁵ CBC News, *Family Seeks Whereabouts of Jailed Chinese-Canadian Activist*, CBC NEWS (March 28, 2008), <https://www.cbc.ca/news/canada/family-seeks-whereabouts-of-jailed-chinese-canadian-activist-1.762192>; Andrew Jacobs, *Chinese-American Faces Trial in China*, NEW YORK TIMES (Dec. 22, 2012), <https://www.nytimes.com/2012/12/23/world/asia/chinese-american-faces-trial-in-china-over-business-dispute.html>; Perrin Grauer & Joanna Chu, *The ‘Forgotten’ Canadians Detained in China*, TORONTO STAR (Dec. 28, 2018), <https://www.thestar.com/vancouver/2018/12/20/the-forgotten-canadians-detained-in-china.html>; John Lyons, *American Citizen Says He Was Denied Refuge in Hong Kong’s U.S. Consulate*, WASHINGTON STREET JOURNAL (Nov. 8, 2020), <https://www.wsj.com/articles/u-s-citizen-says-he-was-turned-away-after-seeking-refuge-in-u-s-consulate-in-hong-kong-11604863457>; Jessie Pang & Greg Torode, *Consulates in Hong Kong refused access to dual nationals needing assistance: Canada*, REUTERS (Feb. 4, 2021), <https://www.reuters.com/article/us-hongkong-security-consulates-idUSKBN2A40UG>. A cautionary note is that special rules of nationality law different from the mainland apply to Hong Kong and Macau.

Scholars have canvassed the legal and policy considerations of permitting dual nationality in China.⁶ Opponents believe that the doubts on political loyalty of overseas Chinese and the ideological tension between China and many other countries remain prominent, and dual nationality was a convenient excuse for exclusion, persecution, and massacre.⁷ The call for dual nationality, they allege, comes disproportionately from middle-class overseas ethnic Chinese in developed countries, not from the vast majority of overseas ethnic Chinese residing in Southeast Asia.⁸ Supporters argue that dual nationality strengthens China's global influence, conforms to the will of overseas Chinese, catches the trend of transnational mobility, and attracts talent from abroad.⁹ Given that China is no longer regarded as a spreader of the "Communist Revolution" in the cold war, its relationship with Southeastern Asian countries has vastly improved.¹⁰ Nonetheless, the realistic possibility of recognizing dual nationality is remote in the short term and is becoming increasingly unlikely given the recent political atmosphere.¹¹ A clear and stable interpretation of when someone has or does not have Chinese nationality is thus more necessary than ever.

I. INTERPRETING ARTICLES 5 AND 9 OF THE CHINESE NATIONALITY LAW

⁶ For a summary of discussions prior to 2005, see JINGWAI HUAREN GUOJI WENTI TAOLUN JI (境外华人国籍问题讨论辑) [DISCUSSION ON THE NATIONALITY ISSUE OF THE OVERSEAS WITH CHINESE DESCENT] (Zhou Nanjing (周南京) ed., 2005); for more recent discussions, see Stephanie Wang, *Does the Nationality Law, and its Prohibition of Dual Nationality, Need Reform...*, 3 TSINGHUA CHINA L. REV. 313 (2011); Wei Jingui & Wang Shaolan (卫金桂 & 王绍兰), *Zhongguo Gongmin Shuangchong Guoji Wenti Yanjiu Shuping* (中国公民双重国籍问题研究述评) [*A Review of the Research in Dual Nationality concerning Chinese Citizens*], 18 YANGZHOU DAXUE XUEBAO (RENWEN SHEHUI KEXUE BAN) (扬州大学学报(人文社会科学版)) [J. OF YANGZHOU UNIV. (HUMAN. & SOC. SCI.)] 18 (2014).

⁷ CHENG XI (程希), *ZHONGGUO FANGQI SHUANGCHONG GUOJI DE HUIGU YU FANSI* (中国放弃双重国籍的回顾与反思) [THE RETROSPECT AND REFLECTION ON CHINA ABANDONING DUAL NATIONALITY] 192 (2005).

⁸ Zhou, *supra* note 6, at 86-87, 122. This Note generally refers to only Chinese nationals as "overseas Chinese" and ethnic Chinese (regardless of their nationality) living in foreign countries as "ethnic Chinese" or "people of Chinese descent." However, some literature cited by this Note fail to make a clear distinction between the two.

⁹ *Id.*

¹⁰ Wang, *supra* note 6; Wei & Wang, *supra* note 6.

¹¹ Wang Jianchang (汪建昌), *Zhongguo Guoji Yimin Zhengce Bianqian Yanjiu: Neizai Luoji yu Weilai Zouxiang* (中国国际移民政策变迁研究:内在逻辑与未来走向) [*Changes of International Migration Policy of China: Internal Logic and Future Path*], 333 JIANGHAI XUEKAN (江海学刊) [JIANGHAI ACAD. J.] 131, 133 (2021).

Since the promulgation of the Nationality Law in 1980, its relatively succinct provisions and the lack of implementation rules or judicial interpretations have created much legal uncertainty and practical inconsistency on its meaning. The most significant puzzle is the meaning of “settled abroad” enshrined in Articles 5 and 9 of Nationality Law. These two articles are the core mechanism through which the non-recognition of dual nationality works.¹² Article 5 provides that “any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.” Article 9 stipulates that “any Chinese national who has settled abroad and who has been naturalized as a foreign national or has acquired foreign nationality of his own free will shall automatically lose Chinese nationality.” Nationality Law also mentions the term in another context. Under Article 10, “Chinese nationals who meet one of the following conditions may renounce Chinese nationality upon approval of their applications: (1) they are near relatives of foreign nationals; (2) they have settled abroad; or (3) they have other legitimate reasons.”

The Note will focus on Articles 5 and 9 as Article 10 has limited legal relevance (see Part I.C.2). It is not clear what situations qualify as “settled abroad” for the purposes of these provisions.¹³ Relevant government officials (Bureau of Exit and Entry Administration of the Ministry of Public Security (MPS))¹⁴ admitted that understanding of the term “varies in different administrative agencies and in different periods, resulting in inconsistent legal

¹² Guoji Fa (国籍法) [Nationality Law] (promulgated by the Nat'l People's Cong., Sept. 10, 1980, effective Sept. 10, 1980), art. 3 (“The People's Republic of China does not recognize dual nationality for any Chinese national.”).

¹³ Ma Zhendong (马振东) et al., *Woguo Guojifa Zhuyao Neirong de Jiedu ji Xiangguan Wenti de Sikao* (我国国籍法主要内容的解读及相关问题的思考) [Interpreting the Main Contents and Thoughts about the Relevant Problems of the Nationality Law], 14 SHANGHAI GONGAN GAODENG ZHUANKE XUEXIAO XUEBAO (上海公安高等专科学校学报) [J. SHANGHAI PUB. SEC. ACAD.] 63, 64 (2004) (“The term ‘settled abroad’ in the Nationality Law does not have a clear definition and there is no supplementary provisions or judicial interpretation.”).

¹⁴ Tabitha Speelman, *Establishing the National Immigration Administration: Change and Continuity in China's Immigration Reforms*, 123 CHINA PERSP. 7, 7 (2020) (On Apr. 2, 2018, the Chinese government established a new agency dedicated to immigration affairs, the National Immigration Administration (NIA) [国家移民管理局], attached under the Ministry of Public Security. The Exit and Entry Administration, previously the primary government organ dealing with immigrants, continues to exist as an administrative entity under the NIA.).

conclusions.”¹⁵ Part I of the Note reviews scholar and practitioner views on the definition of “settled abroad,” conducts a thorough statutory interpretation, and provides a normative solution to the puzzle.

A. Theoretical Approaches to the Term “Settled Abroad”

In theory, one could explore the meaning of “settlement” or “settled” within the context of immigration law from a variety of perspectives. The term may refer to a *de jure right* granted by a foreign country to reside for a permanent or prolonged period or, in contrast, the *fact* that a person has resided somewhere for some time.¹⁶ The determination may turn on the individual’s *action* of residence or the *intent* to settle. Legislators may also adopt a combination of more than one dimension. If so, a further question is how much weight, if any, should be assigned to each relevant factor.

B. Present Interpretations of “Settled Abroad” and Their Shortcomings

1. Three Main Approaches: Between Rights and Facts

Early literature shed little light on what “settled abroad” means.¹⁷ More recently, scholars and practitioners have developed three approaches to interpreting the term “settled abroad.” The first approach attributes both right and facts. It can be named “the mixed approach.” The leading authority is the definition of “settled abroad” in the 2009 *Notice by the Overseas Chinese Affairs Office of the State Council of Issuing the Provisions on Defining the Identities of*

¹⁵ Ye Qing & Hu Shanbin (叶氢 & 胡善斌), *Woguo Churujing Renyuan Guoji De Queren Yu Jiejue Lujing* (我国出入境人员国籍的确认与解决路径) [*Confirmation and Resolution Approach to the Nationality of People who Exit and Entry*], 203 ZHONGGUO RENMIN GONGAN DAXUE XUEBAO (SHEHUI KEXUE BAN) (中国人民公安大学学报(社会科学版)) [J. PEOPLE’S PUB. SEC. UNIV. CHINA (SOC. SCI.)] 128, 131 (2020) (The authors who are high ranking MPS officials did not explain how exactly practices differ among regions.); Yin Xinran & Chen Jin (殷欣然 & 陈进), *Hou Yiqing Shiqi Shuangchong Guoji Renyuan de Guoji Rending Yi J Sheng Y Shi Weili* (后疫情时期双重国籍人员的国籍认定以 J 省 Y 市为例) [*Nationality Identification of Dual Nationality Personnel in the Post-epidemic Period Taking the Example of J Province Y City*] 36 JIANGSU JINGGUAN XUEYUAN XUEBAO (江苏警官学院学报) [J. JIANGSU POLICE INST.] 90, 91 (2021).

¹⁶ Ye & Hu, *supra* note 15, at 31 (“Is ‘settled abroad’ an identity or fact?”).

¹⁷ JIN MOSHENG & CHAI FABANG (金默生 & 柴发邦), ZHONGHUA RENMIN GONGHEGUO GUOJIFA JIANGHUA (中华人民共和国国籍法讲话) [SPEECH ON THE NATIONALITY LAW OF THE PEOPLE’S REPUBLIC OF CHINA] 12 (1981) (interpreting “settled abroad” in Article 5 as “having a residence abroad, in contrast with provisional travel with a residence in China.”).

Overseas Chinese, Chinese of Foreign Nationalities, Returned Overseas Chinese and Relatives of Overseas Chinese (2009 Overseas Chinese Identities Provisions or 2009 Provisions).¹⁸ Section 1 of the *2009 Provisions* defines “overseas Chinese” as Chinese citizens who have “settled down” abroad (“定居在国外”). It further explains that “settled down” means (1) that a Chinese citizen has acquired long-term or permanent residency in the country where he resides and has been residing in the country for two consecutive years, with a cumulative stay in the country of not less than 18 months within the two years. (2) Where a Chinese citizen has not acquired long-term or permanent residency but has acquired the qualification for legal residence for five consecutive years or more in the country, with a cumulative stay in the country of not less than 30 months within the five years, he shall be deemed to be an overseas Chinese. (3) The period of studying abroad (either at the expense of the government or one’s own) or traveling abroad on official duty (including labor dispatch) does not count for the purpose of “settling down.”¹⁹

The core character of this approach is to require a combination of both the right of residency and the fact of an actual stay. Also, the right and the fact complement each other in terms of strength, similar to a “sliding scale” between the two. In other words, if the element of residency right is strong (e.g., permanent or long-term residency), the threshold for the factual element will be low (18 months of stay within two years), and vice versa. Scholars tend to support this approach. For example, Liu alleges that “settlement” as a defined term in immigration law generally refers to both the right of abode and the fact of actual residence instead of one of the dual elements.²⁰ Song argues that “settlement” includes psychological transition and requires both the

¹⁸ *Id.*, at 134; Guanyu Jieding Huaqiao Waiji Huaren Guoqiao Qiaojuan Shenfen de Guiding (关于界定华侨外籍华人归侨侨眷身份的规定) [Provisions on Defining the Identities of Overseas Chinese, Chinese of Foreign Nationalities, Returned Overseas Chinese and Relatives of Overseas Chinese] (promulgated by the Overseas Chinese Affairs Office of the St. Council, Apr. 24, 2009, effective Apr. 24, 2009), CLI.4.340139(EN) (Lawinfochina).

¹⁹ Provisions on Defining the Identities of Overseas Chinese, Chinese of Foreign Nationalities, Returned Overseas Chinese and Relatives of Overseas Chinese (2009), sec. 1.

²⁰ Liu Guofu (刘国福), *Lun Xinxing Kuaguo Liudong Renyuan Guanli Zhidu zhi Guoji he Juliu Xiangjiehe Yuanze* (论新型跨国流动人员管理制度之国籍和居留相结合原则) [*On the Principle of the Combination of Nationality and Residence in the New Management System of Transnational Mobile Personnel*], 6 GUOJI FAXUE LUNCONG (国际法学论丛) [INT’L L. STUD. SYMP.] 106, 111 (2009) (The comment is directed at the definition of “Huaqiao” (overseas Chinese) in Chinese law).

intention and conduct of long-term residence.²¹ Certain MPS officials also find the definition appealing.²²

The second approach focuses its attention on the right of residency only (“the rights approach”). Variations within this bloc share the common view that the right of long-term or permanent residency alone, even uncoupled with any actual residence, constitutes “settled abroad.” For instance, in 1991, the then head of the MPS exit and entry department published an article to explain Article 5 of Nationality Law in People’s Daily (Overseas Edition), in which he equals “settled abroad” with permanent residency.²³ The Immigration Department of Hong Kong Special Administrative Region (HKSAR or HK), which is authorized by the Standing Committee of the National People’s Congress (NPC) to implement Chinese nationality law in HKSAR,²⁴ similarly agrees that “under normal circumstances, having permanent resident status in a foreign country (that is, having resided abroad ordinarily and not being subject to any limit of stay) will be treated as having settled abroad.”²⁵ But it is unclear whether permanent

²¹ Song Xixiang (宋锡祥), *Lun Zhongguo Guojifa de Fazhan yu Wanshan Jianlun Gangao Jumin de Guoji Wenti* (论中国《国籍法》的发展与完善——兼论港澳居民的国籍问题) [*On the Development and Refinement of China’s Nationality Law and on the Nationality Issue of Hong Kong and Macao Residents*], 153 ZHENGZHI YU FALV (政治与法律) [POL. SCI. & L.] 73, 78 (2009).

²² Ye & Hu, *supra* note 15, at 134.

²³ Liu Xin (刘新), *Ruhe Querren Zhongguo Liuxue Jinxiu Renyuan zai Guowai Suosheng Zinv de Guoji* (如何确认中国留学、进修人员在国外所生子女的国籍) [*How to Confirm the Nationality of the Children Born Abroad by Chinese International Students and Those who Are in Advanced Studies*], PEOPLE’S DAILY (OVERSEAS EDITION) (Dec. 18, 1991), cited from Weng Li & Zhang Ye (翁里 & 张烨), *Yifa Jiejue Guoji Chongtu Tujing Xintan* (依法解决国籍冲突途径新探) [*On Exploring New Ways of Settling Nationality Conflicts in accordance with Law*], 34 ZHEJIANG DAXUE XUEBAO (RENWEN SHEHUI KEXUE BAN) (浙江大学学报(人文社会科学版)) [J. ZHEJIANG UNIV. (HUMAN. & SOC. SCI.)] 87, 88 (2004).

²⁴ Quanguo Renmin Daibiao Dahui Guanyu Zhonghua Renmin Gongheguo Guojifa zai Xianggang Tebie Xingzhengqu Shishi de Jige Wenti de Jieshi (全国人民代表大会常务委员会关于《中华人民共和国国籍法》在香港特别行政区实施的几个问题的解释) [*Interpretation by the Standing Committee of the National People’s Congress on Some Questions Concerning Implementation of the Nationality Law of the People’s Republic of China in the Hong Kong Special Administrative Region*] (promulgated by the Standing Comm. Nat’l People’s Cong., May. 15, 1996, effective July 1, 1997), CLI.1.14406(EN) (Lawinfochina), art. 6 (“The Government of the Hong Kong Special Administrative Region is authorized to designate its Immigration Department as the competent authorities for handling nationality applications. The Immigration Department of the Hong Kong Special Administrative Region shall deal with all matters relating to nationality applications in accordance with the Nationality Law of the People’s Republic of China and the provisions mentioned above.”).

²⁵ Immigration Department of the Hong Kong Special Administrative Region, *Frequently Asked Questions on Right of Abode Q10*, IMMIGRATION DEPARTMENT OF

residency is the whole meaning of the term, i.e., whether actual long-term residence in a foreign country is sufficient when the right of permanent residency is missing.

A third approach seeks to define “settled abroad” broadly by recognizing both approaches above (“the expansive approach”). The current practice of Shanghai MPS Exit-Entry Administration Bureau recognizes that “settled abroad” is satisfied in either of the following situations: the applicant has obtained a foreign permanent residence permit, or otherwise the person has lived abroad for five consecutive years with a cumulative stay of no less than nine months each year.²⁶ It adopts the basic position of the rights approach and also recognizes the weight of actual residence. Liu has cautioned that since the identification of personal identity under Chinese law (such as marriage certificates and household registration) has always emphasized legal constructions, the mere fact of settlement should not count if not accompanied by the right to settle.²⁷

No uniform application has developed in practice. MPS officials admit that they sometimes follow the *2009 Overseas Chinese Identities Provisions* and sometimes do not, causing confusion—the application is almost random.²⁸ The fundamental conflict among the three approaches is how to treat the right and factual attributes of the term “settled abroad.” Moreover, scholars tend to be succinct in reasoning why they consider one approach superior to another.

2. Borrowing the Definition of “Settled Abroad” from the Overseas Chinese Department Regulations

Adopting the definition of “settled” from the *2009 Overseas Chinese Identities Provisions* seems natural under the presumption of consistency across the legal system. Some scholars take it for granted that the *2009 Provisions* definition should apply to the Nationality Law.²⁹ A closer analysis, however, casts doubt on it.

THE HONG KONG SPECIAL ADMINISTRATIVE REGION, <https://www.immd.gov.hk/eng/faq/faqroa.html> (last visited Dec. 13, 2021).

²⁶ MHP Law Firm, *Shanghai: Chuguo Dingju Qing Zhuxiao Hukou* (上海: 出国定居, 请注销户口) [*Shanghai: Please Cancel your Household Registration if Settled Abroad*], MHP LAW FIRM (Mar. 22, 2018), <http://www.junyuelawyer.com/CN/05-10740.aspx>.

²⁷ Liu, *supra* note 20, at 111.

²⁸ Ye & Hu, *supra* note 15, at 111.

²⁹ Wang, *supra* note 6, at 320 (citing the definition of overseas Chinese department without examination of its applicability).

Chinese courts have once borrowed a definition from other laws to interpret a term in Nationality Law in the *Zhao Shuwei* case. The term in question is “state functionaries” whom Article 12 of Nationality Law forbids from renouncing their Chinese nationality.³⁰ The court concluded that the definition of the same term in Criminal Law should apply to Zhao, a manager dispatched to an overseas subsidiary of a state-owned enterprise, for the following reasons. (1) The principle of legal system unity means that absent a clear contrary statement, same terms should have the same meaning and scope across statutes. Criminal Law is the only law in the Chinese legal system that defines “state functionaries” and is presumed to control. (2) In terms of the source of law, both Nationality Law and Criminal Law are laws duly enacted and promulgated by the NPC, the country’s highest authority. (3) In terms of legal effects, Nationality Law and Criminal Law are both basic laws of a country and are at the same level in the legal system (Chapter 2 laws under the Legislation Law). (4) Finally, as to the timing of their enactment, the two laws were formulated around the same time during the Fifth National People’s Congress. Furthermore, in 1997, the Eighth NPC amended Criminal Law to extend the scope of “state functionaries” and kept Nationality Law unchanged. This amendment suggests that the legislative branch intended for Criminal Law definitions to control the interpretation of the same terms in Nationality Law.³¹

The teachings from *Zhao Shuwei* and the general principles of statutory interpretation weigh against transplanting the definition of “settled broad” from the Overseas Chinese regulations. First, Nationality Law is a law made by the NPC. It is of the highest level in the Chinese legal system other than the Constitution, while the *2009 Provisions* is only a State Council departmental rule. As to legal effect, the *2009 Provisions* only concern overseas Chinese affairs. Matters in departmental rules are confined to the enforcement of laws and administrative regulations, decisions, and orders of the State Council.³²

³⁰ Nationality Law, art. 12 (“State functionaries and military personnel on active service shall not renounce Chinese nationality.”).

³¹ Liu Miaoxiang & Zhu Qingping, *Zhao Shuwei Nuoyong Gongkuan An Guojia Gongzuo Renyuan Bude Tuichu Zhongguoji* (赵书伟挪用公款案——国家工作人员不得退出中国国籍) [*The Case of Zhao Shuwei Embezzling Public Funds: State Functionaries shall not Renounce Chinese Nationality*] 4 RENMIN SIFA ANLI (人民司法·案例) [PEOPLE’S JUDICATURE: CASES] (2014).

³² Lifa Fa (立法法) [Law on Legislation] (promulgated by the Standing Comm. Nat’l People’s Cong., Mar. 15, 2000, effective July 1, 2000, rev’d Mar. 15, 2015), CLI.1.245693(EN) (Lawinfochina), art. 80 (“The matters prescribed in State Council departmental rules shall be matters for the enforcement of laws or the administrative regulations, decisions, and orders of the State Council. Without any basis in laws or the administrative regulations, decisions, and orders of the State Council, state

The *2009 Provisions* derives its authorization from enforcing *Law on the Protection of the Rights and Interests of Returned Overseas Chinese and the Family Members of Overseas Chinese* and its implementation measures, not Nationality Law.³³ Even within the scope of overseas Chinese regulations, the definition in *2009 Provisions* does not apply to certain areas, such as the mainland college application for Chinese citizens in Hong Kong, Macau, Taiwan and overseas Chinese.³⁴ Third, Criminal Law and Nationality Law were promulgated by the same term of the NPC (with a ten-month interval), and Criminal Law predates Nationality Law. In comparison, the *2009 Provisions* came into being twenty-nine years after Nationality Law. The Overseas Chinese department enacted its earliest definition of “overseas Chinese” and “settled” in 1984, four years after the birth of Nationality Law.³⁵ Fourth, the definition of “settled” has experienced repeated turmoil even within the Overseas Chinese regulations. Three

Council departmental rules shall not set out any requirements that impair the rights or increase the obligations of citizens, legal persons, and other organizations, nor increase the power or decrease the statutory duties of the department.”).

³³ Provisions on Defining the Identities of Overseas Chinese, Chinese of Foreign Nationalities, Returned Overseas Chinese and Relatives of Overseas Chinese (2009), Preamble.

³⁴ 2018 Nian Putong Gaoxiao Lianhe Zhaoshou Huaqiao Gangaotai Xuesheng Banfa (2018 年普通高校联合招收华侨港澳台学生办法) [Measures for the Joint Admission of Overseas Chinese, Hong Kong, Macau, and Taiwan Students by Regular Institutions of Higher Learning] (promulgated by the Ministry of Education of the St. Council, May 30, 2018, effective May 30, 2018), http://www.moe.gov.cn/srcsite/A15/moe_776/s3111/201807/t20180704_341994.html (China), art. 1(3) (“The Overseas Chinese candidate and one of his parents must have obtained long-term or permanent residency in the country of residence, and have resided in the country for 2 consecutive years (as of the end of registration), and the cumulative residence within the two years is not less than 18 months. Among them, the candidate himself must have actually stayed in the country of residence for at least 18 months in the 2 years immediately prior to the registration. If the candidate or one of his parents has not obtained long-term or permanent residency in the country of residence, but has obtained legal residence status for more than 5 consecutive years (including 5 years) in the country of residence, and has an accumulative residence in the country of no less than 30 months within 5 years, and the candidate himself has actually stayed in the country of residence for at least 30 months in the 5 years immediately prior to the registration can also participate in the registration.”).

³⁵ Guanyu Huaqiao Guiqiao Huaqiao Xuesheng Guiqiao Xuesheng Qiaojuan Deng Shenfen Jieshi (Shixing) (关于华侨归侨华侨学生归侨学生侨眷等身份解释(试行)) [Interpretation of the Identities of Overseas Chinese, Returned Overseas Chinese, Overseas Chinese Students, Returned Overseas Chinese Students and Relatives of Overseas Chinese (Trial Implementation)] (promulgated by the Overseas Chinese Affairs Office of the St. Council, June 23, 1984, effective June 23, 1984), art. 2 (“‘Settlement’ means having obtained the residency right of the country one stays in, or having not obtained the residency right of the country one stays but having lived there to earn a living.”)

definitions substituted one another in the past forty years.³⁶ Any further amendment by the Overseas Chinese department will pose the difficult question of whether the interpretation of Nationality Law follows the step. A negative answer would render the whole idea of reference to the Overseas Chinese system futile and lead to fragmentation. On the other hand, catching the speed is even more problematic. It would treat citizens in identical situations oppositely on the pure basis of luck, undermining the seriousness and fairness of law. Fifth, from the perspective of governmentality, the main implementing agencies of Nationality Law are the MPS and the Ministry of Foreign Affairs (MFA).³⁷ Articles 15 and 16 highlight the NPC arrangement to assign *all* nationality applications to the MPS and MFA. Other administrative agencies, when faced with an issue of nationality, should turn to MPS for help under the nationality ascertainment procedure.³⁸ These two departments also monopoly all interpretations of Nationality Law so far. Nationality Law in its text never mentioned the Overseas Chinese department. Therefore, the Overseas Chinese department is not the competent authority to interpret Nationality Law, and its normative input is of minimum value. In addition, Part I.C.2 below discusses that only Nationality Law uses the term “waiguo” (“外国”) while *2009 Provisions* use “guowai” (“国外”). Finally, Part I.C.5 will show that any approach mixing the requirement of facts and rights, as *2009 Provisions* does, entails a fatal structural problem in

³⁶ Aside from the definition of “settlement” in the regulations in *supra* note 33 (applicable between 2009 to present) and note 35 (applicable between 1984 to 2005), a third definition applied between 2005 and 2009. See *Guanyu Dui Huaqiao Dingyu Zhong Dingju de Jieshi (Shixing) (关于对华侨定义中“定居”的解释(试行))* [Interpretation of “Settled down” in the Definition of “Overseas Chinese” (Trial Implementation)] (promulgated by the Overseas Chinese Affairs Office of the St. Council, Nov. 8, 2005, effective Nov. 8, 2005), arts. 1, 2 (“‘Settlement’ means that Chinese citizens have obtained long-term or permanent residency in their country of residence. Chinese citizens who have not obtained long-term or permanent residency in their country of residence, but have obtained the legal residency status for more than 5 consecutive years (including 5 years) in their country of residence, and have lived abroad, are deemed to have ‘settled’.”).

³⁷ George Ginsburgs, *The 1980 Nationality Law of the People's Republic of China*, 30 AM. J. COMP. L. 459, 496 (1982) (“The police apparatus thus exercises a monopoly over these activities (covered under Art. 16), presumably because of their implications for national security.”).

³⁸ *Guanyu Guifan Wo Gaodeng Xuexiao Jieshou Guoji Xuesheng Youguan Gongzuo de Tongzhi (关于规范我高等学校接受国际学生有关工作的通知)* [Notice on Regulating Admission of International Students in China's Higher Education Institutions] (promulgated by the Ministry of Education of the St. Council, May. 28, 2020, effective Jan. 1, 2021), CLI.4.342958(EN) (Lawinfochina), art. 3 (“A higher education institution shall strictly examine the nationality status and application eligibility of international students applying for admission. If there is any doubt about an applicant's nationality status, it shall take the initiative to check and confirm the nationality status of the applicant with the exit and entry department of the local public security authority at or above the level of a district city.”).

practice. Thus, the interpretation of “settled abroad” in Nationality Law should avoid referencing the *2009 Provisions* or any other Overseas Chinese regulations.

C. Statutory Interpretations of Articles 5 and 9 of Nationality Law

Keeping the flaws of current approaches to the definition of “settled abroad” in mind, Part C presents a complete statutory interpretation. “Settled abroad” should be defined as the right of permanent residency, with two possible exceptions to Article 9: undocumented immigration and absence of actual residence.

1. Textual Interpretation

The dictionary definition of “settle” in Chinese is “to reside fixedly somewhere.” The two sample phrases in the dictionary are “to return and settle in China” and “to settle in Beijing.”³⁹ “Abroad” means “a country other than one’s own country.”⁴⁰ “Zai” is a preposition that describes “time, place, scope or condition.”⁴¹ Technically speaking, the existence of “zai” (“定居在外国”) leans towards the status at a given moment, echoing the timing of birth in Article 5; the language in Article 9 without “zai” (“定居外国”) aligns with a status in a continuous period. But the slight difference of “zai” is likely the unintended consequence of linguistic polishing during the legislative process.⁴² Such negligible linguistic difference does not legitimize separate definitions for “settled abroad” in Article 5 and Article 9. The meaning of “settled abroad” in the two provisions should be largely the same, if not identical. The legislative intent analysis below will show that the term in the two articles should have the same meaning, with two exceptions made to Article 9.

2. Systematic Interpretation

³⁹ XIANDAI HANYU CIDIAN (现代汉语词典) [CONTEMPORARY CHINESE DICTIONARY (2018)] 308 (Dictionary Editing Office, Institute of Linguistics, Chinese Academy of Social Sciences ed., 7th ed. 2016).

⁴⁰ *Id.*, at 1343.

⁴¹ *Id.*, at 1629.

⁴² Zhang Chunsheng (张春生), *Xinshiqi de Fazhi Jianshe cong Zheli Qibu* (新时期的法制建设从这里起步) [*The Building of Legal System of a New Era Started Here*], LEGAL DAILY (Dec. 18, 2018), <http://www.npc.gov.cn/npc/c30834/201901/1572ef68df5343abb969ca8afca182b4.shtml> (A group of four members of the Legislative Affairs Commission of the Standing Committee of the National People’s Congress (a linguist, a bridge expert, a mechanical engineering expert, and a sociologist) without legal background worked to incorporate opinions of NPC members and polished the language of the draft of Nationality Law.).

The only place other than Articles 5 and 9 where Nationality Law mentions “settled abroad” is Article 10, which provides that Chinese nationals may renounce Chinese nationality upon approval of their applications if they have “settled abroad” (“定居在外国”). Article 10 is not especially helpful in determining the definition of “settled abroad” since all three possible definitions are compatible with its meaning and purpose. Nor could it elucidate the scope and limit of Articles 5 and 9 because it grants a broad discretionary power in contrast with the precision of the automatic mechanisms. The discretionary nature inhibits the argument for a bright line rule. Other laws and judicial interpretations avoid using the exact same term. Nationality Law chooses the term “waiguo” (“外国” or “foreign countries”) while all other laws (including the *2009 Provisions*) use “guowai” (“国外” or “outside the country”).⁴³ Nor do these laws and judicial interpretations deal with an issue as fundamental as nationality.

3. Purposive Interpretation: The Dual Legislative Intent

(1) Avoiding Dual Nationality

One of the most prominent aims and principles of the 1980 Nationality Law is to avoid dual nationality.⁴⁴ This theme takes up nearly half of the explanation to the draft.⁴⁵ In the explanation to the draft, legislators quoted “the PRC government’s consistent policy not

⁴³ Guanyu Shiyong Minshi Susongfa de Jieshi (关于适用《民事诉讼法》的解释) [Interpretation on the Application of the Civil Procedure Law] (promulgated by the Supreme People’s Court, Jan. 30, 2015, effective Feb. 4, 2015, rev’d Dec. 29, 2020), CLI.3.242703(EN) (Lawinfochina), arts. 13, 14, 17; Guiqiao Qiaojuan Quanyi Baohu Fa (归侨侨眷权益保护法) [Law on the Protection of the Rights and Interests of Returned Overseas Chinese and the Family Members of Overseas Chinese] (promulgated by the Standing Committee of the National People’s Congress, Sept. 7, 1990, effective Jan. 1, 1991, rev’d Aug. 27, 2009), art. 2.

⁴⁴ XIANDAI GUOJIFA (现代国籍法) [MODERN NATIONALITY LAW] 97-98 (Li Shuangyuan & Jiang Xinmiao (李双元 & 蒋新苗) eds., 2016); Tung-Pi Chen, *The Nationality Law of the People’s Republic of China and the Overseas Chinese in Hong Kong, Macao and Southeast Asia*, 5 N.Y.L. SCH. J. INT’L & COMP. L. 281, 304 (1984) (“Consistent with this policy, a basic goal of China’s new Nationality Law is to reduce dual nationality of overseas Chinese.”); Wang Keju (王可菊), *Zhonghua Renmin Gongheguo Guojifa de Jiben Yuanze* (中华人民共和国国籍法的基本原则) [*The Basic Principles of PRC Nationality Law*], 1 ZHONGGUO GUOJIFA NIANKAN (中国国际法年刊) [CHINESE Y.B. INT’L LAW] 216, 223 (1982).

⁴⁵ Wu Xinyu (武新宇), *Guanyu Zhonghua Renmin Gongheguo Guojifa Caoan de Shuoming* (关于《中华人民共和国国籍法(草案)》的说明) [*Notes on the Nationality Law of the People’s Republic of China (Draft)*], NATIONAL PEOPLE’S CONGRESS (Sept. 2, 1980), http://www.npc.gov.cn/wxzl/gongbao/2000-12/25/content_5001174.htm.

to recognize of dual nationality,” as well as Premier Zhou Enlai’s declaration that overseas Chinese automatically lose Chinese nationality if they voluntarily join or acquire foreign nationality.⁴⁶ The avoidance of dual nationality is embodied in the interaction among Articles 3, 5, and 9 of Nationality Law. Article 3 affirms the basic principle that China does not recognize dual nationality; the second half of Article 5 stipulates under what circumstances a person of Chinese descent would have foreign nationality at birth; Article 9 outlines the automatic loss of Chinese nationality. The 1981 *Internal Provisions on the Implementation of the Nationality Law (Trial Draft)* (1981 *Internal Provisions*) issued by the MPS explained that the second half of Article 5 is made to “avoid and resolve the problem of dual nationality of children born to Chinese citizens in foreign countries.”⁴⁷ Scholars also agree that avoiding dual nationality and conflicts caused by dual nationality is the main purpose of Articles 5 and 9 of the Nationality Law.⁴⁸

Logic mandates two potential paths for the denial of dual nationality: denying the foreign nationality upon conflict or denying the home nationality upon conflict. The former appears more aggressive. For example, Iran falls within the first category by disregarding the foreign nationality of any Iranian citizen who acquires foreign nationality without going through a series of procedural hurdles.⁴⁹ As Ginsburgs pointed out, such a bare refusal to recognize the foreign nationality in no way diminishes the validity of such foreign nationality in third countries.⁵⁰ Chinese nationality law is in the second category with deference to foreign nationality. In other words, Nationality Law adheres to the theme of modesty and respect for foreign nationality laws.

(2) Retaining the Chinese Nationality of Those who Have not Settled Abroad and Their Children

⁴⁶ *Id.*

⁴⁷ Guanyu Shishi Guojifa de Neibu Guiding (Shixing Caoan) (关于实施国籍法的内部规定(试行草案)[81]公发[政]50号) [Internal Provisions on the Implementation of the Nationality Law (Trial Draft)] (promulgated by the Ministry of Public Safety of the St. Council, Apr. 7, 1981, effective Apr. 7, 1981) art. 3.

⁴⁸ Zhang Chunsheng (张春生), *Chuli Shuangchong Guoji Wenti de Zhengque Yuanze* (处理双重国籍问题的正确原则) [*The Correct Principle of Dealing with Dual Nationality Issues*], 3 Faxue Zazhi (法学杂志) [L. J.] 40, 40-41 (1980); Ma, *supra* note 13, at 63.

⁴⁹ MOHSEN AGHAHOSSEINI, CLAIMS OF DUAL NATIONALS AND THE DEVELOPMENT OF CUSTOMARY INTERNATIONAL LAW: ISSUES BEFORE THE IRAN-UNITED STATES CLAIMS TRIBUNAL 18 (2007)

⁵⁰ Ginsburgs, *supra* note 37, at 463.

The deference to foreign nationality is not without limit. The limitation on the application of foreign nationality law constitutes the second, less evident but equally important purpose of Nationality Law: to prevent those who have not settled abroad and their children from losing Chinese nationality. This purpose is embodied in the “settled abroad” requirement in Article 5. Some people must fall within the category for the provision to have actual meaning.⁵¹ Children born in a foreign country of a Chinese parent not settled in a foreign country will only be recognized as Chinese nationals even if they acquire foreign nationality at the time of birth.⁵² In the past forty years, in accordance with this line of understanding, a new industry of birthright tourism from China to the US on non-immigrant visas to give birth to children with nationality conflict (commonly referred to as “meibao,” i.e., “American baby”) has prospered.⁵³ The number of such “American babies” born per year exceeded 10,000 in 2012.⁵⁴ These children acquire US citizenship at birth under US law and Chinese nationality pursuant to Article 5 of the Nationality Law. When in China, they will only be recognized as Chinese nationals. This situation is called nationality conflict. It is legal under Chinese law for a child with nationality conflict to retain both nationalities and hold multiple passports. To travel to China, they may apply for a special document called “lvxingzheng” (travel permit), which is available to, among others, “non-adult Chinese nationals with special circumstances.”⁵⁵ They need to disclose whether they have foreign

⁵¹ Based on the canon against surplusage.

⁵² Wang Quan (王全), *Fanzui Xianyiren Shuangchong Guoji Wenti de Yingdui yu Chuli Jianping Yu Shanjiang Ji Lili Fenlie Guojie he Zuzhi Lingdao Canjia Kongbu Zuzhi An* (犯罪嫌疑人“双重国籍”问题的应对与处理 兼评玉山江·吉力力分裂国家和组织、领导、参加恐怖组织案) [*Study on Dual Nationality of Criminal Suspects from the Perspective of International Law with a Comment on the Case of Yu Shanjiang Ji Lili Case of Dismembering the State and Organizing, Leading and Participating in Terroristic Organization*] 135 ZHONGGUO XINGJING XUEYUAN XUEBAO (中国刑警学院学报) [J. CRIM. INVESTIGATION POLICE UNIV. CHINA] 53, 54 (2017).

⁵³ Jennifer Medina, *Arriving as Pregnant Tourists, Leaving With American Babies*, NEW YORK TIMES (Mar. 28, 2011), <https://www.nytimes.com/2011/03/29/us/29babies.html>.

⁵⁴ Tong Mu (童木), *Fumei Shengzi Renshu 10nian Fan Baibei Chanyelian Neng Yanghuo Shangwan Ren* (赴美生子人数 10 年翻百倍 产业链能养活上万人) [*The Number of People Going to the U.S. to Give Birth Has Doubled in 10 years, and the Industry Chain Can Feed Tens of Thousands*], SINA.COM (Oct. 14, 2014), <http://finance.sina.com.cn/china/20141014/063120529892.shtml>.

⁵⁵ China Consular Services, *Huzhao/Lvxingzheng Jianjie* (护照/旅行证简介) [*A Brief Introduction to Passports/Travel Permits*], CHINA CONSULAR SERVICES (Nov. 19, 2021), http://cs.mfa.gov.cn/zggmzhw/hzlxz/hzlvzjj_660526/.

nationality or hold foreign passports on the application form.⁵⁶ To leave China, they may apply for “churujingtongxingzheng” (exit and entry permit) from MPS branches. Internationally, they are dual nationals; but within the sovereign reach of Chinese territory, they are regarded exclusively as Chinese citizens per the principle of non-recognition of dual nationality enshrined in Article 3 of the Nationality Law. Non-recognition, different from straight prohibition, is a legal fiction without punitive consequences, and its legal force does not extend beyond Chinese territories.

The abolishment of the choice of nationality procedure in the 1980s generates uncertainty around whether nationality conflict status may prolong indefinitely. Most children would implicitly lose Chinese nationality upon adulthood (eighteen years old) since only non-adults may apply for travel permits.⁵⁷ However, if the child has managed to acquire household registration or Chinese passports, or Chinese authorities continue issuing travel permits/exit and entry permits to him after he reaches maturity, the child might remain a *de facto* dual national permanently.

Although the preservation purpose has received less attention from legal scholars, legislative entities and administrative agencies have consistently upheld it. In the *1981 Internal Provisions*, the MPS reaffirmed that Article 5 of the Nationality Law is not applicable to “children born in foreign countries by those who are dispatched by the Chinese government or temporarily residing overseas, or returned overseas Chinese and their children who have returned to settle down before the promulgation of the Nationality Law.”⁵⁸ MPS agency practice is noteworthy because the MPS led the initial drafting process and serves as one of the two designated implementing agencies.⁵⁹

⁵⁶ Consulate General of the People's Republic of China in Los Angeles, *Zhonghua Renmin Gongheguo Huzhao/Lvxingzheng/Huiguozhengming Shenqingbiao* (中华人民共和国护照/旅行证/回国证明申请表) [*Application Forms of Passports/Travel Permits/Certificate of Return of the People's Republic of China*], CONSULATE GENERAL OF THE PEOPLE'S REPUBLIC OF CHINA IN LOS ANGELES (Feb. 9, 2018), <http://losangeles.china-consulate.org/chn/lszj/bgxz/hzlxzbg/201802/P020210816045486437540.pdf>.

⁵⁷ *Internal Provisions on the Implementation of the Nationality Law* (Trial Draft) (1981), art. 2 (Article 4 of Nationality Law has changed the previous practice of allowing children of Chinese and foreign intermarriage within China to “choose his nationality” after reaching the age of 18. Due to the practice of “choice of nationality”, not only the first-generation, but also the second and third generation mixed-race children have to make a “choice of nationality”, which has led to chaos. Therefore, the Nationality Law abolished the “choice of nationality” procedure.).

⁵⁸ *Id.*, art. 3.

⁵⁹ Wu, *supra* note 45 (“The Nationality Law of the People's Republic of China (Draft) was drafted by the Ministry of Public Security in conjunction with relevant

Moreover, given the proximity in time (MPS drafted the *1981 Internal Provisions* one year after the enactment of Nationality Law), it is not unreasonable to assume that the MPS officials who drafted this internal rule had also participated in the legislation of Nationality Law.

The 1991 article in *People's Daily (Overseas Edition)* mentioned above further elaborates on this point.

“The second half of Article 5 should be understood as follows. For this provision to apply, if both parents are Chinese citizens, they must both have obtained the right of permanent residency in the foreign country, i.e., have settled abroad; if one parent is a Chinese citizen and the other one is a foreign citizen, the Chinese parent must have obtained the right of permanent residency of the foreign country, i.e., have settled abroad. If both or one of the parents is an international student or a student for advanced studies and has not obtained permanent residency, or if only one of the two Chinese parents has obtained permanent residency, the children born abroad will still have Chinese nationality; China does not recognize the foreign passports held by such children.”⁶⁰

The 1991 article clarified two critical issues: first, it asserted that “settled abroad” is a necessary element of Article 5 for each Chinese parent; second, the government, for the first time, equated “settled abroad” with the right of permanent residency.

The 1991 Article does not put an end to the turmoil. In the 2008 *Notice of the Ministry of Public Security and the Ministry of Foreign Affairs on Issues Concerned in Implementing Article 5 of the Nationality Law of the People's Republic of China (2008 Notice)*, after consultation with the Legislative Affairs Commission of the Standing Committee of the NPC, the MPS and MFA superseded the 1991 article and formally announced that Article 5 applies as long as one Chinese parent satisfies the “settled abroad” element.⁶¹ MFA embassies in

departments...According to opinions from local governments and other agencies, the Ministry of Public Security and the Legislative Affairs Commission, together with the Ministry of Foreign Affairs, the Overseas Chinese Affairs Office, the Ministry of Civil Affairs and other relevant departments...”).

⁶⁰ Liu, *supra* note 23.

⁶¹ Gong'anbu Waijiaobu Guanyu Zhixing Zhonghua Renmin Gongheguo Guojifa Di Wu Tiao Guiding Youguan Wenti de Tongzhi (公安部、外交部关于执行《中华人民共和国国籍法》第五条规定有关问题的通知(公境[2008]2204号)) [Notice

foreign countries updated their instruction for travel documents accordingly.⁶² The normative document, however, avoided the question of what “settled abroad” means.⁶³

Article 9 of the Nationality Law plays a similar role in preserving Chinese nationality in certain situations. It does not stipulate that all Chinese citizens who have acquired foreign nationality will automatically lose their Chinese nationality. Instead, its application is limited to those who are “settled abroad” and have acquired foreign nationality “out of one’s own will.” In 1990, the MPS and the MFA issued the *Notice of the Ministry of Public Security and the Ministry of Foreign Affairs on the Illegal Use of Foreign Passports by Chinese Citizens (1990 Notice)*.⁶⁴ The 1990 Notice stated that “some people have obtained foreign passports before leaving China...most of them hold so-called ‘investment immigration passports’ and some of them buy passports with a high price.” Some countries were highlighted.⁶⁵ The 1990 Notice then went on to emphasize that those who hold foreign passports must have sufficient proof that they have residency rights and have actually settled in a foreign country in order to satisfy the test of “settled abroad” in Article

of the Ministry of Public Security and the Ministry of Foreign Affairs on Issues Concerned in Implementing Article 5 of the Nationality Law of the People's Republic of China] (promulgated by the Ministry of Public Safety and the Ministry of Foreign Affairs of the St. Council, Sept. 5, 2008, effective Sept. 5, 2008), CLI.4.111214(EN) (Lawinfochina).

⁶² Embassy of China in the U.S., *Zai Meiguo Chusheng de Zhongguo Xuetong Ertong Zhongguo Qianzheng* (在美国出生的中国血统儿童中国签证) [*Chinese Visas for Children of Chinese Descent Born in the U.S.*], EMBASSY OF CHINA IN THE U.S. (Feb. 4, 2015), <http://www.china-embassy.org/chn/lszj/qz/t1234521.htm> (“According to the Nationality Law of the People’s Republic of China, if both or one of the parents is a Chinese citizen and resides in a foreign country, the person who acquires foreign nationality at birth does not have Chinese nationality and should apply for Chinese visa before traveling to China.”).

⁶³ Notice of the Ministry of Public Security and the Ministry of Foreign Affairs on Issues Concerned in Implementing Article 5 of the Nationality Law of the People’s Republic of China (2008).

⁶⁴ Gongganbu Waijiaobu Guanyu Zhongguo Gongmin Feifa Chiyong Waiguo Huzhao Youguan Wenti de Tongzhi (公安部、外交部关于中国公民非法持用外国护照有关问题的通知) [Notice of the Ministry of Public Security and the Ministry of Foreign Affairs on the Illegal Use of Foreign Passports by Chinese Citizens] (promulgated by the Ministry of Public Safety and the Ministry of Foreign Affairs of the St. Council, June 28, 1990, effective June 28, 1990), CLI.4.72427 (Lawinfochina) (“Passports held by such persons include passports of Bolivia, Tonga, Belize, Nicaragua, Ecuador, Peru, Panama, Mauritius, Argentina, Colombia, Thailand, and Philippines. Some countries sell passports in large quantities in order to absorb foreign exchange. In fact, they do not allow licensees to settle in the country, nor do they recognize that they have the nationality of that country.”).

⁶⁵ *Id.*

9, or else their foreign nationality will not be recognized.⁶⁶ In 1995, the MPS issued a further notice (now repealed) targeting and restricting the operation of intermediary agencies in China engaged in foreign investment immigration programs.⁶⁷

The MPS correctly appreciated the overall idea that not everyone who acquires foreign nationality has “settled abroad.” The *1990 Notice*, however, is of questionable legality and rationality since it conflates five distinct situations: (1) buying fake passports not recognized by any country; (2) buying authentic passports by illegal means (such as bribing foreign government and diplomatic officials); (3) buying authentic passports legally from a foreign country that “sells” passports with limited functions (for instance, the foreign country does not recognize the passport holder as its citizen or does not allow the passport holder to enter the country); (4) participation in immediate or fast-track investment immigration programs which have a low bar or no bar at all as to actual residence requirement but nonetheless render fully functional nationality; and (5) participation in investment immigration programs which have a substantial bar for actual residence in the foreign country and render fully functional nationality. Passports gained through the first two means are null and void. States may deny the validity of passports with limited functions in the third scenario.⁶⁸ Though the Chinese government arguably may deny immigration by investment programs without any actual residence in the fourth situation, it is baseless to deny good faith immigration in the fifth situation. The *1990 Notice* takes the sweeping position of treating all five cases as illegal purchases of foreign passports.⁶⁹ The Notice also fails to articulate a specific standard to determine “substantial actual residence,” in contravention of the

⁶⁶ *Id.*

⁶⁷ Gonganbu Guanyu Jianjue Zhizhi Feifa Congshi Zhaolai Yimin Huodong de Tongzhi (公安部关于坚决制止非法从事招徕移民活动的通知) [Notice of the Ministry of Public Security on Resolutely Stopping the Illegal Activities of Solicitation of Immigrants] (promulgated by the Ministry of Public Safety of the St. Council, Aug. 9, 1995, effective Aug. 9, 1995), CLI.4.16886 (Lawinfochina). Although the Ministry of Public Safety has not yet declared it invalid, the Zhejiang Provincial Public Security Department listed it as an abolished normative document in 2020, probably due to the fact that the State Council reformed market admission and the Ministry of Public Safety has accordingly abolished its restriction on private immigration intermediary services. See Gonganbu Guanyu Feizhi Yinsi Churujing Zhongjie Huodong Guanli Banfa de Jueding (公安部关于废止《因私出入境中介活动管理办法》的决定) [Decision of the Ministry of Public Security to Repeal the Measures for the Administration of the Intermediary Services for Exit and Entry for Private Purposes] (promulgated by the Ministry of Public Safety of the St. Council, Nov. 7, 2018, effective Nov. 10, 2018), CLI.4.326065(EN) (Lawinfochina).

⁶⁸ ALFRED M. BOLL, MULTIPLE NATIONALITY AND INTERNATIONAL LAW 112 (2007) (discussing the case of Tonga).

⁶⁹ See Part I.C.5.

principle against vagueness and uncertainty. Its prohibition and non-recognition of foreign nationality do not cover most typical investment immigration programs in practice. A final note is that acquisition of nationality based on legitimate connections other than residence, such as blood connection or remedial citizenship, satisfies Article 9.

(3) Application

The two purposes, that of avoiding dual nationality as well as retaining Chinese nationality for some people, are intertwined. It is imperative to grasp the balance intended by legislators between the two purposes when drawing a bright line rule.

The broader historical and international relations background that informs the government's pronounced distaste for dual nationality is ethnic Chinese in Southeast Asia⁷⁰—specifically, the government's goal to eliminate the dual nationality of ethnic Chinese living in Southeast Asia.⁷¹ The 1980 Nationality Law codifies diplomatic efforts towards this end, such as the treaty with Indonesia on dual nationality.⁷² Under these diplomatic efforts, no overlap of nationality is allowed, and children subject to nationality conflict are required to make a choice at the age of eighteen. The Chinese nationals who have not settled abroad but nonetheless comply with other elements of Article 5 and Article 9 are sources of dual nationality and nationality conflict. The scope of the term “settled abroad” should thus be construed as broadly as possible to minimize dual nationality and nationality conflict.

In this regard, “settled abroad” in Article 5 should be defined as permanent or long-term residency only, under the presumption that the foreign government has already made its assessment by issuing residency rights. Xiao criticizes the philosophy of Article 9, arguing that determining the nationality of children of Chinese descent based on foreign laws would run contrary to China's sovereignty, the “people-oriented” philosophy, and the international society's respect for children's right to choose their nationality.⁷³ However, it is the very

⁷⁰ LIU HUA (刘华), HUAQIAO GUOJI WENTI YU ZHONGGUO GUOJI LIFA (华侨国籍问题与中国国籍立法) [THE ISSUE OF THE NATIONALITY OF OVERSEAS CHINESE AND CHINESE NATIONALITY LEGISLATION] 174-78 (2004).

⁷¹ Chen, *supra* note 44, at 304.

⁷² Liu, *supra* note 70, at 214-15.

⁷³ Xiao Yongping & Guo Minglei (肖永平 & 郭明磊), *Quanqiuhua Shiye Xia de Shuangchong Guoji Jianlun Woguo Guojifa de Biduan yu Duice* (全球化视野下的双重国籍兼论我国国籍法的弊端与对策) [*Dual Nationality in the Perspective of Globalization and the Shortcomings and Solutions of Chinese Nationality Law*], 59

intent of the NPC to refer to foreign laws in order to be able to resolve nationality conflicts in the spirit of comity. Requiring residency rights will not unduly deprive the choice of nationality for children born abroad. Parents may deliberately choose to give birth in China or abroad to arrive at the nationality they desire.

Moreover, it is impossible to evaluate and discern the intent of parents that give birth in foreign countries. These parents may be married Chinese students pregnant after leaving China, travelers that accidentally give premature birth on ships or flights, or even short-term visitors trapped in a foreign country due to travel restrictions during a pandemic, as the most recent example. The government and courts possess neither the value judgment tools to decide what situations are “worthy” of Chinese nationality nor the practical resources to investigate in detail the circumstances of each individual case. It is burdensome enough to study and scrutinize the permanent residency regimes of nearly two hundred countries,⁷⁴ let alone discern the length of actual residence for millions of individuals.

Requirements of actual residence are disfavored. The abolishment of the choice of nationality procedure in 1980 (see Part I.C.3(2)) suggests legislative revulsion to mechanisms that require individualized fact-finding. In the same spirit, Articles 5 and 9 are designed to be *automatic*. Any additional scrutiny concerning the length of actual residence, as found in the *2009 Provisions*, will be both legally problematic and practically burdensome. It could also very well lead to public policy and diplomatic failures. Many countries’ investment immigration programs require a residency period shorter than that of the *2009 Provisions*, and these programs include more than microstates and tax-evasion heavens. The Golden Visa Program of Portugal, for instance, only requires the applicant to spend seven to fourteen days per year in Portugal for the first five years.⁷⁵ Strict implementation of the rules of the *2009 Provisions* on actual residence will deny the grant of foreign nationality from many states and lead to undesirable diplomatic confrontation.

The same standard should also apply to Article 9 with only minor modifications, if any. When the Nationality Law was drafted (1979-1980), China had just ended decades of draconian exit

WUHAN DAXUE XUEBAO ZHIXUE SHEHUI KEXUE BAN (武汉大学学报(哲学社会科学版)) [WUHAN UNIV. J. (PHIL. & SOC. SCI.)] 581, 586 (2006).

⁷⁴ Ma, *supra* note 13, at 64.

⁷⁵ Christian Henrik Nesheim, *Portugal Approves 10,000th Golden Visa, Has Raised Nearly €600,000 Per Application*, INVESTMENT MIGRATION INSIDER (Oct. 10, 2021), <https://www.imidaily.com/intelligence/portugal-approves-10000th-golden-visa-has-raised-nearly-e600000-per-application/>.

restrictions, and the budding liberation of private travel was still very limited.⁷⁶ It was also an era when international migration, cross-border residence, and programs designed by states to attract investment immigrants had been relatively scarce compared to the booming development in these areas more recently.⁷⁷ There seemed to be no pressing need when the law was first promulgated to elaborate on the meaning of “settled abroad” due to limited cross-border mobility.⁷⁸ The current global migration is likely well beyond what legislators in 1980 could have imagined. A reasonable inference as to the decision had the legislators been aware of what the world looks like today can be made: they consistently enlarge the permission to migration under the reform and opening-up policy in the past several decades. In accordance with this liberal attitude towards emigration and choice of nationality, “settled abroad” should not be a high threshold. The practice of MPS to equal “investment immigrant programs” with purchasing passports in the 1990s is thus outdated.⁷⁹ As investment immigration programs boomed in countries across the world, the government was forced to adjust to the reality and forfeited its hostility. Passports acquired through investment immigration are widely recognized in China nowadays. Such hostility would be even more bizarre and double-standard in light of the recent immigration reform by the Chinese government to attract foreign talents.⁸⁰

⁷⁶ GUOFU LIU, *THE RIGHT TO LEAVE AND RETURN AND CHINESE MIGRATION LAW* 139-43 (2007).

⁷⁷ Madeline Sumption & Kate Hooper, *Selling Visas and Citizenship: Policy Questions from the Global Boom of Investor Immigration*, MIGRATION POLICY INSTITUTE (Oct. 2014), <https://www.migrationpolicy.org/research/selling-visas-and-citizenship-policy-questions-global-boom-investor-immigration>.

⁷⁸ Wang, *supra* note 6, at 319-20.

⁷⁹ Notice of the Ministry of Public Security and the Ministry of Foreign Affairs on the Illegal Use of Foreign Passports by Chinese Citizens (1990). It is notable that although the Ministry of Public Safety never declared it invalid, the Zhejiang Provincial Public Safety Department did not include the document in its list of currently effective administrative normative documents. Whether it is an omission or a deliberate move is not clear. See Zhejiangsheng Gonganting Guanyu Baoliu Feizhi Xingzheng Guifanxing Wenjian de Tongzhi (浙江省公安厅关于保留废止行政规范性文件的通知(浙公办[2015]11号)) [Notice of Zhejiang Provincial Public Security Department on Retaining and Abolishing Administrative Normative Documents] (promulgated by the Zhejiang Provincial Public Security Department, Jan. 16, 2015, effective Jan. 16, 2015), CLI.12.1181173 (Lawinfochina); Zhejiangsheng Gonganting Guanyu Baoliu he Feizhi Xingzheng Guifanxing Wenjian de Tongzhi (浙江省公安厅关于保留和废止行政规范性文件的通知(浙公通字[2020]48号)) [Notice of Zhejiang Provincial Public Security Department on Retaining and Abolishing Administrative Normative Documents] (promulgated by the Zhejiang Provincial Public Security Department, Nov. 6, 2020, effective Nov. 6, 2020), CLI.12.4117208 (Lawinfochina).

⁸⁰ CENTER FOR CHINA AND GLOBALIZATION, *ZHONGGUO GUOJI YIMIN BAOGAO 2018* (中国国际移民报告(2018)) [ANNUAL REPORT ON CHINESE INTERNATIONAL MIGRATION (2018)] 60-66 (Wang Huiyao & Miao Lv (王辉耀 & 苗绿) eds., 2018).

Therefore, ideally, there should not be any examination of actual residence under Article 9. Two possible exceptions may apply. The first exception is an extremely rare circumstance under Article 9 where the Chinese national acquired a foreign passport without ever setting foot in the foreign country. Under the fourth situation discussed in the *1990 Notice*, the investment by immigration programs with a low bar should satisfy “settled abroad” as long as they require *any* actual residence. Only those citizenship by investment programs with no requirement of actual residence, or where the intermediary step of legal permanent residence is eliminated or reduced to bureaucratic box-ticking,⁸¹ can form the basis of non-recognition of the foreign nationality under Article 9. If legislators do intend to effect the exception, they should issue a list of specified countries that fail the test of actual residence, similar to the list of investment immigration programs with high-risk to the integrity of CRS developed by the Organization for Economic Co-operation and Development (OECD).⁸² The best practice, as the European Commission did,⁸³ is to compose the list based on studies of immigration programs. A country-specific clear rule is increasingly essential as the number of formalized citizenship by investment programs rose recently, with Chinese nationals among their top applicants.⁸⁴ Otherwise, it is predictable that arbitrary denial of foreign nationality at the convenience of authorities will erode the stability of nationality and serve as a new type of arbitrage for *de facto* dual nationality. Those who fail to automatically lose Chinese nationality under this exception may still apply for renunciation of Chinese nationality pursuant to Article 10 of Nationality Law.

The second possible exception concerns undocumented Chinese emigrants to other countries. Without this exception, if these undocumented emigrants legally acquire foreign nationality granted by the foreign country and are not recognized as “settled abroad” because they do not possess the right of residence, they will not lose Chinese nationality and end up being *de facto* dual nationals. The menace here is that other Chinese emigrants may complain that the disparate treatment constitutes an unjust penalty to them. Additional scrutiny to

⁸¹ Kristin Surak, *Marketizing Sovereign Prerogatives: How to Sell Citizenship*, 62 *EUR. J. SOCIO.* 275, 278 (2021).

⁸² OECD, *Residence/Citizenship by Investment Schemes*, OECD, <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/> (last visited Jan. 21, 2022).

⁸³ European Commission, *Investor Citizenship Schemes: Information on the follow-up of the Commission's Report on Investor Citizenship and Residence Schemes in the European Union*, EUROPEAN COMMISSION, https://ec.europa.eu/info/investor-citizenship-schemes_en (last visited Feb. 8, 2022).

⁸⁴ Surak, *supra* note 81, at 278-79.

prevent dual nationality arising out of these two exceptions has a moral basis that multiple citizenship by naturalization or by investment is ethnically less legitimate than by birth.⁸⁵ The solution for their need to connect with China is residency rights and visa privileges.

4. Comparative and Pragmatic Interpretations

The essence of nationality law remains primarily an internal matter of sovereignty, and it is for each State to decide, in accordance with its national law, the question of who its nationals are.⁸⁶ No universal legal mechanism has so far emerged to regulate nationality.⁸⁷ Few limits under international law, not even genuine links between the person and the country, apply to the validity of the naturalization process.⁸⁸ The nationality law and policies of each country, including China's non-recognition of dual nationality, only take effect within its sovereign domain. For example, a Chinese citizen may very well acquire a Grenadian passport and use it to travel to a third country. The third country's law will determine its treatment of that traveler. Chinese nationality law does not have either legal or factual relevance under this situation. Moreover, the denial of foreign nationality and the retention of Chinese nationality under Chinese law, combined with the recognition of the foreign passport by other countries, serve as a form of jurisdictional arbitrage along the lines of "Chinese nationality home, foreign nationality abroad"—*de facto* dual nationality.

The experience of *de facto* dual nationality in China illustrates how idealistic legal rules and defective implementation create perverse incentives. In the 1980s, Chen optimistically predicted that due to the introduction of Nationality Law, dual nationals would "be minimal in

⁸⁵ ANA TANASOCA, *THE ETHICS OF MULTIPLE CITIZENSHIP* 10-11 (2018).

⁸⁶ *Draft Articles on Diplomatic Protection with Commentaries*, *supra* note 4, at 31, art. 4, comment 2; Nottebohm (*Liechtenstein v. Guatemala*), 1955 I.C.J. 4, ¶ 20 (Apr. 6).

⁸⁷ Kim Rubenstein & Niamh Lenagh-Maguire, *More or Less Secure? Nationality Questions, Deportation and Dual Nationality*, in *NATIONALITY AND STATELESSNESS UNDER INTERNATIONAL LAW* 264, 266 (Alice Edwards & Laura van Waas eds., 2014).

⁸⁸ Oliver Dörr, *Nationality*, Max Planck Encyclopedia of Public International Law [MPEPIL] (2019), ¶ 18; *Draft Articles on Diplomatic Protection with Commentaries*, *supra* note 4, at 32-34, art. 4, comment 5-6. For limits of international law on nationality, see Anne Peters, *Extraterritorial Naturalizations: Between the Human Right to Nationality, State Sovereignty and Fair Principles of Jurisdiction*, 53 GERMAN Y.B. INT'L L. 623 (2010); Kay Hailbronner, *Nationality in Public International Law and European Law*, in *ACQUISITION AND LOSS OF NATIONALITY VOLUME I: COMPARATIVE ANALYSES: POLICIES AND TRENDS IN 15 EUROPEAN COUNTRIES* 35-104 (Rainer Bauböck et al. eds. 2006); PAUL WEIS, *NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW* (1979).

actual numbers and fade in a short time.”⁸⁹ But without sharing of information between countries and government entities within a country, it is common for those who have acquired foreign nationality to hide the fact that they have automatically lost Chinese nationality.⁹⁰ Today, both *de facto* dual nationality (by concealing the fact that one has automatically lost his Chinese nationality under Article 9) and legally recognized nationality conflict are prevalent.⁹¹ A Member of the Standing Committee of the NPC even acknowledged *de facto* dual nationality as a widespread legal quandary.⁹² From January 2013 to June 2014, a total of 1.06 million (former) Chinese citizens who concealed their loss of Chinese nationality by holding on to their local citizenship proof after acquiring foreign nationality were required by the MPS to delete their Chinese household registration.⁹³ Learning from the lesson, the definition of “settled abroad” must carry due consideration of its enforceability in the real world. Scrutinization of actual residence is impractical under current circumstances and should be avoided.

5. Conclusion

Textual and systematic interpretations do not suggest the necessity of examining actual residence. Legislative intent and pragmatic concerns call for an automatic system that avoids individualized fact-finding. The conclusion is that “settled abroad” should be defined as permanent or long-term residency rights, with two possible exceptions of purchasing passports without actual stay and undocumented immigration under Article 9. The author hopes that this

⁸⁹ Chen, *supra* note 44, at 310 (1984) (“Although dual nationality may still occur under the provisions of the 1980 Nationality Law, the impact of dual nationals is expected to be negligible in terms of actual numbers. The largest population of dual nationals arose as a consequence of the traditional Chinese policy prohibiting denaturalization without consent...The remnants of this population, however, will fade in a short time because of the current PRC Government’s strong dilution of the ‘blood’ connection.”).

⁹⁰ Elaine Lynn-Ee Ho, *Caught Between Two Worlds: Mainland Chinese Return Migration, Hukou Considerations and the Citizenship Dilemma*, 15 *CITIZENSHIP STUD.* 643, 653 (2011).

⁹¹ PETER J SPIRO, *AT HOME IN TWO COUNTRIES: THE PAST AND FUTURE OF DUAL CITIZENSHIP* 92 (2016).

⁹² Zou Wei & Yu Xiaojie (邹伟 & 余晓洁), *Renda Changweihui Weiyuan: Woguo Cunzai Jiaoda Shuliang Shuangchong Guoji* (人大常委会委员 我国存在较大数量双重国籍) [*Member of the Standing Committee of the National People’s Congress: There Is A Large Number of Dual Nationality Instances in China*], SINA.COM (Apr. 26, 2012), <http://news.sina.com.cn/c/2012-04-26/225324336292.shtml>.

⁹³ Yin Pumin, *Debating Dual Citizenship: Experts Call for Dual Citizenship to Attract Talents Despite Tightened Single Citizenship Management*, BEIJING REV. (September 25, 2014), http://www.bjreview.com.cn/nation/txt/2014-09/25/content_642355.htm.

definition will be helpful to legislators, regulators, diplomatic officials, and individuals who encounter the question of Chinese nationality.

D. Other Issues of Concern

1. When to Examine the Requirement of “Settled Abroad”?

In addition to the meaning of “settled abroad,” another confusing issue is the choice of time for “settlement.” In the era of globalization, people could frequently switch between staying in their home country (if there is one) and traveling to foreign countries. The answer to Article 5 is relatively simple since the clause sets the timing “at birth.” The parents must be settled abroad at the moment the child is born. But the language seems less clear for Article 9. Three timing is available: any period before the person acquires foreign nationality; the moment the person acquires foreign nationality; any period after the person acquires foreign nationality.

The second and third timing would defeat the essence of Article 9 and render it subject to abuse. Since sovereign states may and often times grant their nationality to a person located in a foreign country through their consulate institutions abroad, any Chinese citizen can circumvent Article 9 as long as he returns to China and then acquires foreign nationality during his stay in China. Chinese courts, in one of its rare cases that dealt with nationality law, also affirmed this conclusion.⁹⁴ In *Cha Yang*, the plaintiff Cha Yang returned to China after studying and working in the US for about thirteen years (from 1986 to 1999), during which he acquired permanent residency in 1992. He applied for the Chinese bar in August 2001 and was sworn in as a US citizen at the US embassy in Beijing in September 2001, while his bar application was pending. The Ministry of Justice granted his bar application in December.⁹⁵ The plaintiff argues that he acquired US citizenship after returning to Beijing to settle instead of during his settlement in the US, so Article 9 does not apply. Both the Higher People’s Court in Beijing and MPS Exit and Entry Administration rejected this argument.⁹⁶ Any settlement prior to the acquisition of foreign nationality counts toward “settled abroad” under Article 9.

⁹⁴ Cha Yang yu Zhonghua Renmin Gongheguo Sifabu Ershen Xingzheng Panjueshu (查扬与中华人民共和国司法部二审行政判决书(2017)京行终 4196 号) [Second Instance Administrative Judgment on Cha Yang v. The Ministry of Justice] (Beijing Higher People’s Court July 10, 2018).

⁹⁵ *Id.* The fact that Cha Yang naturalized to be a US citizen while his bar application is pending and practiced as a Chinese lawyer thereafter served as the basis for termination of his bar.

⁹⁶ *Id.*

2. Which Parent is Required to Satisfy the “Settled Abroad” Element in Article 5?

Ye and Hu pointed out that the presently controlling interpretation that only one Chinese parent needs to be “settled abroad” for the second half of Article 5 to apply leads to a logical dilemma.⁹⁷ For instance, if both parents are Chinese citizens and only one of them has “settled abroad”, their children born abroad with foreign nationality at birth lose their Chinese nationality; if one parent is a foreign citizen and the other one is a Chinese citizen not settled abroad, their children born abroad keep their Chinese nationality.⁹⁸ The overall nexus of the former situation (*jus sanguinis* connection) is stronger than that of the latter, but the endowment of nationality mandates otherwise. In line with the skepticism, the 1991 article, as aforementioned, requires that both parents have obtained the right of permanent residency if they are both Chinese citizens for Article 5 to apply. It is no longer good law. Per the *2008 Notice*, only one Chinese parent needs to “settle abroad” under Article 5.

3. “Settled Abroad” in Which Country under Article 5?

Another tricky question is which country the person needs to be “settled abroad” in order for Article 5 to apply. It is possible that a Chinese citizen with permanent residency right of country A and married to a citizen of country A gives birth to a child in country B, and the child acquires the nationality of country B at birth. If only the permanent residency of birthplace is required, in extreme circumstances, the child might have triple nationalities: *jus soli* nationality of country B, *jus sanguinis* nationality of country A, and Chinese nationality. Some MFA consulates, such as the Chinese Consulate in Los Angeles, thus determine that a Chinese citizen with permanent residency rights of any country satisfies “settled abroad.”⁹⁹ Other consulates remain ambiguous on this issue. But extending the scope of settled countries will not help solve the problem since a country rarely provides in their nationality law that a child born by a permanent resident in a third country acquires its nationality at birth. In the example above, the blood connection derives from the other parent who is a national of country A, irrespective of whether the Chinese citizen has permanent residency rights in country A. It is also

⁹⁷ Ye & Hu, *supra* note 15, at 132.

⁹⁸ *Id.*

⁹⁹ Consulate General of China in Los Angeles, *Lvxing Zheng Banfa Huanfa Bufa* (旅行证：颁发、换发、补发) [*Travel Permits: Issuance, Renewal, and Replacement*], CONSULATE GENERAL OF CHINA IN LOS ANGELES (Sept. 30, 2021), http://losangeles.china-consulate.org/lszj/hzlxz/hzlxzxz/202106/t20210601_9021825.htm.

convenient to conceal a third country's permanent residency by replacing passports. Only the country of permanent residence facilitates the policy aim to harmonize the relationship between China and that country.¹⁰⁰ Therefore, rules like the Los Angeles Consulate one fail to address any issue. The only permanent residency that matters should be that of the country whose nationality is acquired at birth.

II. HOW CHINESE COURTS DEAL WITH THE INTERPRETATION OF ARTICLES 5 AND 9 OF NATIONALITY LAW

Between 2014 and October 2021, 81 cases concerning whether one has automatically lost Chinese nationality under Article 9 of Nationality Law were publicly available on the “China Court Judgments” (中国裁判文书网) website run by the Supreme People's Court.¹⁰¹ No case directly concerns Article 5 of Nationality Law. The following observations are made through an analysis of these cases (for a complete list of the Dataset Cases, see Appendix).

Table 1: Distribution of the Dataset Cases by Type

Type	Number
Criminal	1
Administrative	9
Civil	70
Other (Enforcement)	1

Table 2: Distribution of the Dataset Cases regarding Article 9 of Nationality Law over Year

Year	Number of Cases
2014	11
2015	3
2016	5

¹⁰⁰ Gao Lin (高琳), *Lun Zhongguo Guoji de Zidong Sangshi* (论中国国籍的自动丧失) [*On the Automatic Loss of Chinese Nationality*], in *supra* note 6, DISCUSSION ON THE NATIONALITY ISSUE OF THE OVERSEAS WITH CHINESE DESCENT 138, 146.

¹⁰¹ Multiple proceedings (such as appeals and retrials) of a case are consolidated as one case pursuant to the latest procedural development. Two cases (Appendix No. 34) involve the enforcement of a civil judgment and are counted as civil cases.

2017	13
2018	18
2019	13
2020	11
2021	7

Table 3: Distribution of the Dataset Cases regarding Article 9 of Nationality Law over Court Recognition of Chinese or Foreign Nationality

Foreign Nationality Recognized	Chinese Nationality Recognized	Unclear Which Nationality Was Recognized	Total Number of Cases
70	6	5	81

A. Almost No Court Examines the Element of “Settled Abroad” except for Criminal Cases

The observation that Chinese courts preclude the loss of Chinese nationality if the individual had not settled abroad when he acquired a foreign nationality¹⁰² is largely accurate in criminal cases but more nuanced in civil and administrative cases. In almost all non-criminal cases, Chinese courts refuse to treat “settled abroad” as a substantive element in deciding nationality, especially when no party explicitly claims so (Table 3). Only in five out of eighty non-criminal cases did courts analyze the issue of “settled abroad,” and none of them brought forward a clear standard. Among the five decisions, three civil cases mentioned that the person had spent time in a foreign country (Appendix No. 16, 42, 57). One case held that in light of the principle of single nationality, there is a presumption of Article 9 application when a Chinese citizen acquires foreign nationality and no need to examine actual residence (Appendix No. 64). One case implicitly refused to scrutinize the element (Appendix No. 74). As a result, Chinese courts in 86% (70 out of 81) of the cases recognized the foreign nationality and the loss of Chinese nationality. This finding corresponds to the conclusion in Part I that examination of actual residence is unwarranted.

¹⁰² Jasper Habicht & Eva Lena Richter, *De Facto Dual Nationality in Chinese Law and Practice*, 20 CHINA: AN INT’L J. 24, 39 (2022).

B. The Phenomenon of De Facto Dual Nationality is Prevalent

Since the data of MPS Household Registration Department and MPS Exit and Entry Department are not connected, Chinese citizens who acquire foreign nationality and lose Chinese nationality pursuant to Article 9 may continue holding their local citizenship in the mainland, i.e. identification cards (“身份证”) and household registration (“户口”).¹⁰³ They could enjoy *de facto* dual nationality unless authorities discover it since the local, sub-national state provides the majority of important social and economic citizenship rights based on household registration.¹⁰⁴ Important social and economic rights are attached to these local citizenship proof, and they could enjoy *de facto* dual nationality. There are currently no central-level laws or regulations that explicitly require those who have acquired foreign nationality to cancel their Chinese local citizenship proof. A policy statement from the MPS in 2003 requires cancellation of household registration if the person “settles abroad,” which remains undefined.¹⁰⁵ Only several local governments, such as Shanghai, have enacted regulations clarifying that the cancellation extends to those who have joined foreign nationality.¹⁰⁶ Nor is there specification as to whether this policy applies to identification cards.

Table 4 Those Who Lost Chinese Nationality Under Article 9 but Retained Local Citizenship Proof (Identification Cards, Household Registration, or Chinese Passports)

¹⁰³ Ye & Hu, *supra* note 15, at 131.

¹⁰⁴ Samantha A. Vortherms, *Hukou as a Case of Multi-Level Citizenship*, in THE ROUTLEDGE HANDBOOK OF CHINESE CITIZENSHIP (Zhonghua Guo ed.) 132, 132 (2022).

¹⁰⁵ The Ministry of Public Safety, *Gonganbu Sanshixiang Bianmin Limin Cuoshi* (公安部三十项便民利民措施) [*Thirty Measures to Convenient and Benefit the People by the MPS*], MPS (Aug. 7, 2003), <http://www.scio.gov.cn/xwfbh/xwfbh/wqfbh/2003/0807/Document/327359/327359.htm>.

¹⁰⁶ Guanyu Yu Yinfa Shanghaishi Changzhu Hukou Guanli Guiding de Tongzhi (关于印发《上海市常住户口管理规定》的通知) [Notice on Issuing Shanghai Regulation on the Management of Regular Household Registrations], SHANGHAI MPS (Apr. 4, 2018), <https://gaj.sh.gov.cn/shga/wzXxfbGj/detail?pa=110ef360e4374a41a9bee739534e6c5c54d01a372ab513b4df6374b968980fd4>.

Retained Local Chinese Citizenship Proof	No Retained Local Chinese Citizenship Proof	Unclear Whether Local Chinese Citizenship Proof Was Retained	Cases in which the Court Determined that the Person Has Lost Chinese Nationality
54	13	3	70

In more than two-thirds (77%) of the cases in which the court determined that the person has lost Chinese nationality under Article 9, the person still retains his identification card, household registration, or Chinese passport (Table 4). As discussed in Part II.A, most courts pierce the veil of local citizenship proof and recognize foreign nationality. The Supreme Court, in a jurisdictional appeal, ruled that “the failure to de-register resident identity card of the People’s Republic of China in a timely fashion after a former Chinese citizen acquires foreign nationality is an administrative management issue and does not affect the determination of his status as a foreign national.”¹⁰⁷

C. Parties Take Advantage of the Invisibility of Foreign Nationality to Gain Procedural Advantages

A side effect of the general availability of local citizenship proof and *de facto* dual nationality is the weaponization of procedural tools based on foreign nationality. Chinese civil procedure law requires special procedures and, in many circumstances, assigns a higher-level court to hear foreign-related cases.¹⁰⁸ Failure to abide by these requirements may serve as grounds for appeal or retrial.¹⁰⁹ Parties with *de facto* dual nationality often bring the initial lawsuit as Chinese citizens and disclose their foreign nationality at a later stage to switch to a higher court or to appeal (Appendix No. 10, 20, 26, 51, 68, 71). The “second chance” strategy is a double-edged sword. Once learning the fact that one party is a foreign national, the other party who lost the

¹⁰⁷ Guangxi Lihui Touzi Youxian Gongsi Wang Yuanye Hezi Hezuo Kaifa Fangdichan Hetong Jiufen Ershen Minshi Caidingshu (广西丽汇投资有限公司王原野合资合作开发房地产合同纠纷二审民事裁定书(2017)最高法民辖终125号) [Second Instance Civil Award of Guangxi Lihui Investment Co., Ltd. v. Wang Yuanye on Joint Venture and Cooperative Development of Real Estate Contract Dispute] (Supreme People’s Court Apr. 27, 2017).

¹⁰⁸ Zuigao Renmin Fayuan Guanyu Shewai Minshangshi Anjian Susong Guanxia Ruogan Wenti de Guiding (最高人民法院关于涉外民商事案件诉讼管辖若干问题的规定) [Provisions of the Supreme People’s Court on Some Issues Concerning the Jurisdiction of Civil and Commercial Cases Involving Foreign Elements] (promulgated by the Supreme People’s Court, Feb. 25, 2002, effective Mar. 1, 2002, rev’d Dec. 29, 2020), CLI.3.349779 (Lawinfochina).

¹⁰⁹ *Id.*

initial trial or preferred other jurisdictions may also use the foreign identity of the opposing party to challenge the decision (Appendix No. 12, 15).

Out of the 70 cases where the person has lost Chinese nationality by acquiring foreign nationality (as in Table 4), in 39 cases, the person initially appeared in the court as a Chinese citizen, and a later disclosure of foreign nationality resulted in procedural consequences. Here we define “procedural consequence” as one of the following situations: cases moved to a different court, retrial, annulment of judgment, appeal granted. MPS officials also observe that people with *de facto* dual nationality disguise as ordinary Chinese citizens but use their foreign nationality in court to take advantage of prolonged foreign-related court proceedings.¹¹⁰ Unsurprisingly, the percentage of civil cases that went beyond first instance is irregularly high compared to the overall percentage. According to SPC, in 2019, the ratio between closed first instance civil cases and all other civil cases (including appeal and adjudication supervision) is around 6.2:1.¹¹¹ In our civil Dataset Cases, the ratio is 1.1:1, with 34 out of 70 cases going beyond first instance.

A final note is that although parties do show an opportunistic tendency in dealing with their foreign nationality in courts, not all parties and courts are fully aware of the procedural consequences. In some cases, the parties did not allege their due procedural objections, and the court did not use its inherent power to transfer jurisdiction even after realizing that it was dealing with a foreign-related case.¹¹²

¹¹⁰ Cai Zhiyong & Li Jun (蔡志勇 & 李君), *Dui Yiju Guowai Huaren Guoji Rending Wenti de Sikao* (对移居国外华人国籍认定问题的思考) [*A Reflection of Identification of the Nationality of People of Chinese Descent Moving Overseas*], 17 SHANGHAI GONGAN GAODENG ZHUANKE XUEXIAO XUEBAO (上海公安高等专科学校学报) [J. SHANGHAI POLICE COLL.] 64, 65 (2007).

¹¹¹ Supreme People's Court, *2019nian Quanguo Fayuan Sifa Tongji Gongbao* (2019年全国法院司法统计公报) [*2019 National Court Judicial Statistics Bulletin*], SUPREME COURT, PEOPLE'S COURT, <http://gongbao.court.gov.cn/Details/fcadfe71e8d5a54acd8f840f768e65.html> (last visited Dec. 22, 2021) (In 2019, Chinese courts closed 16,177,373 civil cases. Among them, 13,929,634 cases are first instance). The author only discusses civil cases here since the distinction between first instance and other proceedings of administrative cases is more nuanced.

¹¹² Wu Caidi yu Ng Kam Chol Ng Kum Lan Gongyouquan Queren Jiufen Minshi Ershen Caidingshu (吴彩娣与 Ng Kam Chol Ng Kum Lan 共有权确认纠纷一案民事二审裁定书(2020)粤 04 民终 1165 号) [*Second Instance Civil Award of Wu Caidi v. Ng Kam Chol & Ng Kum Lan on Confirmation of Co-Ownership*] (Zhuhai Intermediate People's Court May 11, 2020).

Table 5.1 Distribution of cases regarding Article 9 of Nationality Law over the foreign country at issue

Country	Number of Cases
United States	17
Australia	16
South Korea	11
Canada	7
Japan	5
Germany	3
Ireland	2
Italy	2
New Zealand	2
Singapore	2
Thailand	2
Unspecified	2
Vanuatu	2
Argentina	1
The Commonwealth of Dominica	1
Kazakhstan	1
Saint Kitts and Nevis	1
South Africa	1
Suriname	1
United Kingdom	1
Venezuela	1

Table 5.2 Distribution of cases regarding Article 9 of Nationality Law over Provinces with Five or More Cases

Provincial Level Administrative Units	Number of Cases
Beijing	15
Guangdong	14
Jilin	9
Liaoning	7
Shanghai	7
Zhejiang	5
Guangxi Zhuang Autonomous Region	5

D. Deference to MPS Determination of Nationality

In three cases, Chinese courts inquired the MPS about one party's nationality and complied with the MPS conclusion in all three scenarios (Appendix No. 58, 60, 74).¹¹³ On the one hand, this is understandable since the key facts related to the Article 9 issue are only accessible through international travel and identification records exclusive to MPS. But as other cases show, exit and entry records are enough in many circumstances for the court to do its own fact-finding (Appendix 27, 57, 77). So, the lack of expertise with respect to nationality law, saving of time and effort, and "passing the buck" mentality also contributed to this deference.

E. No Evident Pattern in Real Estate and Land Cases

There are nine cases involving disputes of urban housing ownership, and courts determined that Article 9 applies in all of them and recognized foreign nationality. There are ten cases on rural real estate disputes (including rural land contracting, distribution of

¹¹³ Shi Kewei yu Cixi Shi Minzhengju Xingzheng Dengji Ershen Xingzheng Panjue Shu (施可为与慈溪市民政局行政登记二审行政判决书(2014)浙甬行终字第 51 号) [Shi Kewei and Cixi Civil Affairs Bureau on Administrative Registration] (Ningbo Intermediate People's Court Aug. 6, 2015); Kuang Fuzhi Shouhui Tanwu Feifa Chiyou Sicang Qiangzhi Danyao Ershen Xingshi Panjue Shu (邝辅之受贿贪污非法持有私藏枪支弹药二审刑事判决书(2017)粤 07 刑终 72 号) [Kuang Fuzhi Case on Taking Bribes, Embezzling, and Illegal Possession of Guns and Ammunition] (Jiangmen Intermediate People's Court May 9, 2017); Zhou Xiaojun Cai Xu yu Shanghai Huangpu Zhidi Jituan Youxian Gongsi Fangwu Zulin Hetong Jiufen Yishen Minshi Panjue Shu (周筱军蔡旭与上海黄浦置地集团有限公司房屋租赁合同纠纷一审民事判决书(2017)沪 0101 民初 3460 号) [Zhou Xiaojun, Cai Xu and Shanghai Huangpu Land Group Co., Ltd. Housing Lease Contract Dispute] (Shanghai Huangpu District People's Court Mar. 21, 2018).

compensation for the requisition of contracted land, and rural property purchase contracts). The number of cases available is too small for any conclusion, although some courts appear reluctant to recognize foreign nationality in rural cases. Thus, the author only lists several notable cases. Where one party presents online conversation evidence to show that the person acknowledged foreign nationality, the court found it inconclusive and turned to household registration records.¹¹⁴ In another case, one party claimed that he returned to China in 2015, but his Chinese passport is blank without any exit and entry record attached. The court refused to explore the situation further.¹¹⁵ One outlier case held that a former villager who acquired foreign nationality under a fake name and identity could also retain his Chinese nationality and receive compensation for requisition of contracted rural land.¹¹⁶ It is premature to summarize these cases into a pattern.

A preliminary conjecture may be that courts are under greater pressure in rural land cases to “quiet down people and bring about peace” (“息事宁人”). Still, the judgment would inevitably enrage the other party. Most of the rural cases are between a “villager group” (a grassroots self-government unit) that distributes the compensation from the government and an individual who joined foreign nationality, so the influence from the government is limited. Another reason may be the acquiescent gesture towards widespread emigration to South Korea in Northeastern rural areas.¹¹⁷

¹¹⁴ Jiang Jingzi Jin Dongzhen Deng yu Yuan Shunyu Deng Nongcun Fangwu Maimai Hetong Jiufen Yishen Minshi Panjueshu (姜景子金东镇等与元顺玉等农村房屋买卖合同纠纷一案民事判决书(2018)黑 0110 民初 6724 号) [Jiang Jingzi & Jin Dongzhen et al. v. Yuan Shunyu on Rural Real Housing Purchasing Agreement] (Heilongjiang Province Harbin Xiangfang District People’s Court Nov. 28, 2018).

¹¹⁵ Cui Zaiyou Gao Taizhu Deng yu Cui Zaifeng Liwenyong Deng Nongcun Tudi Chengbao Hetong Jiufen Yishen Minshi Panjueshu (崔载佑高泰洙等与崔在峰李文勇等农村土地承包合同纠纷一审民事判决书(2018)吉 0202 民初 1039 号) [Cui Zaiyou & Gao Taishu et al. v. Cui Zaifeng & Li Wenying et al. on Rural Land Contracting Agreement] (Jilin Province Jilin Changyi District People’s Court May 30, 2019)

¹¹⁶ Yanji Shi Xiaoying Zhen Minzhu Cun Erzu yu Xu Shanshu Chengbaodi Zhengshou Buchang Feiyong Fenpei Jiufen Zaishen Shencha Minshi Caidingshu (延吉市小营镇民主村二组与许善淑承包地征收补偿费用分配纠纷再审查民事裁定书 (2017)吉民申 3580 号) [Yanji City Xiaoying Town Minzhu Village Second Group v. Xu Shanshu on Compensation for Requisition of Contracted Rural Land] (Jilin Higher People’s Court Nov. 7, 2017).

¹¹⁷ JEONGWON BOURDAIS PARK, IDENTITY, POLICY, AND PROSPERITY: BORDER NATIONALITY OF THE KOREAN DIASPORA AND REGIONAL DEVELOPMENT IN NORTHEAST CHINA 122 (2018).

F. Criminal Courts Vigorously Scrutinize the “Settled Abroad” Element to Deny Foreign Nationality

In the only criminal decision from the Dataset Cases, the court denied the foreign nationality of a state functionary that acquired US nationality in 2007 (Appendix No. 58).¹¹⁸ The defendant Kuang Fuzhi was once ordered by the Chinese Consulate in Vancouver to give back his Chinese passport during his stay abroad. He argued that this is a clear indication that the Chinese government believed that he had lost Chinese nationality. The court determined that the defendant had not actually settled in the US without further explanation.

A strong parallel of tactics can be detected between other criminal cases not posted on the China Court Judgments website and *Kuang Fuzhi*. In *Yuan Mingang and Bao Huamin Defrauding Exit Documents* (1999), *Liu Leaking State Secrets* (2009), and *Huang Shumin Corruption* (2021), the criminal court insisted that the defendant has Chinese nationality despite the fact that they have acquired foreign nationality.¹¹⁹ In *Yuan Mingang*, the court relied on the *1990 Notice* and denied foreign nationality acquired through investment immigration, although the defendant spent about four years in the foreign country before acquiring his passport. The *Liu* court acknowledged that Liu acquired permanent residency but refrained from examining the length of actual residence. It instead turned to Article 12 that the defendant was a state functionary when he acquired foreign nationality. The *Huang Shumin* case exhibits the most astonishing twisting of the law: it compared the length of time the defendant spent in China (21 years) and Australia (8 years) and concluded the defendant had not settled abroad. This line of reasoning is unsustainable under any theory. Writing on the theories of this

¹¹⁸ Kuang Fuzhi Shouhui Tanwu Feifa Chiyou Sicang Qiangzhi Danyao Ershen Xingshi Panjue Shu (邝辅之受贿贪污非法持有私藏枪支弹药二审刑事判决书(2017)粤07刑终72号) [Kuang Fuzhi Case on Taking Bribes, Embezzling, and Illegal Possession of Guns and Ammunition] (Jiangmen Intermediate People's Court May 9, 2017).

¹¹⁹ Zhang Huawei et al., *Liumou Xielou Guojia Mimi An Xiemi Fanzui Zhuyi Nengfou Yin Baomi Xieyi er Shige* (刘某泄露国家秘密案 泄密犯罪主体能否因保密协议而适格) [*The Case on Liu Leaking State Secrets: Can the Subject of Leaking Crimes be Eligible Due to Confidentiality Agreements*], 17 RENMIN JIANCHA (人民检察) [PEOPLE'S PROCURATORIAL] 37, 37 (2009); *Yuan Mingang Bao Huamin Pianqu Chujing Zhengjian An* (袁闵钢、包华敏骗取出境证件案) [The Case on Yuan Mingang & Bao Huamin Fraudulently Acquiring Exit Documents] 9 XINGSHI SHENPAN CANKAO (刑事审判参考) [REFERENCE TO CRIMINAL TRIAL] No. 69 (1999); *Huang Shumin Tanwu Zui Xingshi Shenpan Jiandu Xingshi Tongzhi Shu* (黄淑敏贪污罪刑事审判监督刑事通知书(2021)新02刑申10号) [Huang Shumin Embezzlement Case] (Xinjiang Uygur Autonomous Region Karamay Intermediate People's Court Nov. 29, 2021) CLI.C.402870097 (Lawinfochina).

subject, two Shanghai judges have commented that in criminal trials, courts should “tend to recognize Chinese nationality” when in doubt because these cases relate to national unity, social stability, the safety of the people, and judicial sovereignty.¹²⁰ At this point, there has not been any publicized criminal case where the criminal court supported the finding of foreign nationality for those who were once Chinese citizens when it was a contentious issue during trial.

Criminal courts divert sharply from their civil and administrative peers and apply all kinds of tactics to deny foreign nationality. The impetus is presumably to be immune from consular assistance by foreign diplomats, stricter and longer proceedings for foreign defendants, and public pressure. The arbitrariness warned above do contaminate the criminal courts.

III. STAGNANT NATIONALITY LEGISLATION IN THE CHINESE LEGAL SYSTEM

This part situates the problem of nationality law within the modern Chinese legal system. More than forty years after the promulgation of the Nationality Law, the law remains unchanged, and the key terms and origins of disputes remain ambiguous under Chinese law. Conflicting considerations from the top, inability and indolence at the mid-level, and lasting traditional concepts of blood connection all contribute to the problem. The author does not attempt a comprehensive analysis of the issue of dual nationality or the structure and governance of immigration in China. It focuses on one specific question instead: why has China avoided amending the 1980 Nationality Law, consciously or unconsciously, for the past forty years? Legislative inaction or the lack of top-level motivation does not by itself explain the chaotic landscape of Chinese nationality law. Authorities and the Chinese Communist Party (CCP) often times develop interim policies and practices to deal with vague issues. For example, the MPS included the revision of the Nationality Law in its tenth five-year legislative plan (2001-2005) but has made no discernible progress so far.¹²¹ Therefore, it is fascinating that the CCP and the administrative state have also dodged the question by avoiding

¹²⁰ Zhou Sheng & Zhang Yu (周圣 & 张筠), *Falv Loudong yu Sifa Shiyong Yi She Shuangchong Guoji Wenti zhi Sifa Shijian wei Shijiao* (法律漏洞与司法适用——以涉双重国籍问题之司法实践为视角) [*Legal Loopholes and Judicial Application: From the Perspective of Judicial Practice on Dual Nationality Issues*], HIGHER PEOPLE'S COURT OF SHANGHAI MUNICIPALITY (May. 25, 2016), <http://www.hshfy.sh.cn/shfy/gweb2017/xxnr.jsp?pa=aaWQ9NDE4NzM2JnhoPTEmbG1kbT1sbTQ3NgPdcssPdcssz&zd=spyj>.

¹²¹ Zhou, *supra* note 6, at 244-245.

developing regulations, roadmaps, or even informal policies to fill the gap.

A. *The History of Chinese Nationality Legislation*

Several centuries of Chinese emigration have resulted in more than 40 million overseas Chinese and people of Chinese ancestry.¹²² The first codified Chinese nationality legislation was the 1909 *Daqing Guoji Tiaoli* (Qing Nationality Ordinance) promulgated by the Qing dynasty. It clings to the principle of patrilineal *jus sanguinis*, allows dual nationality, and exerts strict restrictions on expatriation. Afterwards, the Republic of China enacted the 1912 Nationality Law and the 1929 Nationality Law, which inherited most of the Qing legislation, including the clear permissibility of dual nationality.¹²³ The People's Republic of China (PRC) abolished all Kuomintang laws in 1949 and had no nationality legislation until 1980.¹²⁴ During the period, the PRC government regulated nationality through administrative measures, diplomatic practice, international treaties, and government policies. In September 1980, the NPC adopted the current Nationality Law.

B. *Hesitation among Top Decision-makers*

The legislators and top decision-makers in China are faced with multiple competing strategic approaches to the nationality issue. The starting point is the conflict between Chinese national interests and the protection of ethnic Chinese abroad. On the international stage, China switched to a policy of single nationality to develop normal diplomatic relations with Southeast Asian countries.¹²⁵ With approximately 23 million ethnic Chinese in Southeast Asia, constituting 77% of the Singaporean and 24.8% of the Malaysian populations,¹²⁶ the impact of dual nationality on Sino-Southeast Asian relations cannot be underestimated. The single nationality principle is also incorporated in

¹²² Min Zhou & Gregor Benton, *Intra-Asian Chinese Migrations: A Historical Overview*, in CONTEMPORARY CHINESE DIASPORAS 1, 1 (Min Zhou ed. 2017).

¹²³ Shao Dan, *Chinese by Definition: Nationality Law, Jus Sanguinis, and State Succession, 1909-1980*, 35 TWENTIETH-CENTURY CHINA 4-28 (2009); Liu, *supra* note 70, at 92-95, 135-38.

¹²⁴ ZHANG YONG & CHEN YUTIAN (张勇 & 陈玉田), XIANGGANG JUMIN DE GUOJI WENTI (香港居民的国籍问题) [THE ISSUE OF NATIONALITY FOR RESIDENTS OF HONG KONG] 40-44 (2000). Whether the old laws continued to apply between 1949-1980 is subject to dispute.

¹²⁵ Liu, *supra* note 70, at 174-75; Cheng, *supra* note 7, at 96-97.

¹²⁶ Leo Suryadinata, *China's Citizenship Law and the Chinese in Southeast Asia*, in LAW AND THE CHINESE IN SOUTHEAST ASIA 169, 169 (M. Barry Hooker ed. 2002).

international legal documents between China and Southeast Asian countries.¹²⁷

Another concern is foreign interference and national unification.¹²⁸ Some worry that dual nationality could be used as a tool to interfere with the ethnic minority population of China or to intervene on behalf of dual nationals in China.¹²⁹ It may be possible under certain circumstances for a sending state to invoke consular assistance or diplomatic protection in a receiving state for a dual national of both countries. The stipulation of Article 2 of the 1980 Nationality Law that “persons belonging to any of the nationalities in China shall have Chinese nationality” was a direct response to the granting of North Korean nationality certificates to *chaoxianzu* and Soviet passports to

¹²⁷ See e.g., *Joint Communiqué of the Government of the People's Republic of China and the Government of the Republic of the Philippines (Peking, June 9, 1975)*, MINISTRY OF FOREIGN AFFAIRS, <https://www.mfa.gov.cn/ce/ceph/eng/zfgx/zzgx/t183265.htm> (last visited Mar. 28, 2022) (The Government of the People's Republic of China and the Government of the Republic of the Philippines consider any citizen of either country who acquires citizenship in the other country as automatically forfeiting his original citizenship.); *Joint Communiqué of the Government of the People's Republic of China and the Government of Malaysia 1974/05/31*, MINISTRY OF FOREIGN AFFAIRS, http://my.china-embassy.org/eng/zt/BilateralDocuments/200705/t20070510_1769405.htm (last visited Mar. 28, 2022) (Both the Government of the People's Republic of China and the Government of Malaysia declare that they do not recognize dual nationality. Proceeding from this principle, the Chinese Government considers anyone of Chinese origin who has taken up of his own will or acquired Malaysian nationality as automatically forfeiting Chinese nationality.).

¹²⁸ Habicht & Richter, *supra* note 102, at 43 (“Furthermore, the concern for separatism, as well as the legitimacy of the Communist Party, especially with regard to the legal status of the Republic of China may well be fundamental reasons to maintain the status quo.”).

¹²⁹ Xin Haiguang (信海光), *Huifu Shuangchong Guoji Shi Dang Huan Tu Zhi (恢复双重国籍事当缓图之)* [*We Should Plan Slowly on the Restoration of Dual Nationality*], CAIXIN BLOG (May 10, 2012), <http://xinhaiguang.blog.caixin.com/archives/45102> (Xin warned that the granting of North Korean or South Korean nationality to *chaoxianzu* (Joseonjok or “of Korean nationality”) Chinese citizens may cause secession and turmoil.). Although it is generally recognized that a state may not afford consular assistance to one of its nationals against a state whose nationality such person also possesses, there are still practices to do so. See John Dugard, *Diplomatic Protection*, Max Planck Encyclopedia of Public International Law [MPEPIL] (2021), ¶ 24-30 (describing the emergence of dominant or effective nationality rules); JOHN QUIGLEY ET AL., *THE LAW OF CONSULAR ACCESS: A DOCUMENTARY GUIDE* 39-46 (2009) (United States Department of State, for examples, requires its consuls to press very hard for consular access to a dual national under some circumstances.); LUKE T. LEE & JOHN B. QUIGLEY, *CONSULAR LAW AND PRACTICE* 125-30 (3d ed. 2008) (examples of consular assistance to dual nationals); *Draft Articles on Diplomatic Protection with Commentaries*, *supra* note 4, at 43-37, art. 7, comment 1-7 (permitting diplomatic protection if the sending state nationality is predominant).

Xinjiang residents.¹³⁰ The politics of citizenship in divided nations also play a role.¹³¹ As former Premier Wen Jiabao once quoted regarding Taiwan, “only when the blood of the native son flows back to his native place will it stop boiling.”¹³² Aside from territorial arguments, the narrative of blood connection, the exclusive conception of *jus sanguinis*, and ethnonationalism remain prominent.¹³³

Secondly, many have alleged that the side effect of pure diplomatic calculations is the abandonment of protections for ethnic Chinese residing abroad. Liu argued that, by adopting a policy of single nationality, Beijing established the state's supremacy over individuals in defining the national interests and the unchallenged priority of the China-centered approach. The latter has remained the “guiding principle” in PRC overseas Chinese policy ever since.¹³⁴ There has been a lingering tension between the need to connect with the Chinese diaspora to help China develop and the government's fear of being perceived as interfering with another country's nationals.¹³⁵ Critics of the single nationality law, witnessing the continued mistreatment of ethnic Chinese in foreign countries, have complained that the denial of dual nationality “did not fundamentally improve the living environment of ethnic Chinese.”¹³⁶ Those who advocate for a shift in

¹³⁰ Internal Provisions on the Implementation of the Nationality Law (Trial Draft) (1981), art. 1 (Article 2 stipulates that in our country, “persons belonging to any of the nationalities in China shall have Chinese nationality.” This is because some countries regard people of certain ethnic groups in our country as their citizens and issue passports or nationality documents to people of certain ethnic groups in China through their embassies and consulates...To this end, we insist that people of all ethnic groups in our country have Chinese nationality and do not recognize passports or citizenship certificates issued to Chinese citizens by foreign embassies and consulates without authorization.).

¹³¹ Choo Chin Low, *The Politics of Citizenship in Divided Nations: Policies and Trends in Germany and China*, 49 COMMUNIST & POST-COMMUNIST STUD. 123, 123-35 (2016).

¹³² The Economist, *Devil May Care: Taiwan's Elections, Seen from the Mainland*, THE ECONOMIST (May 20, 2004), <https://www.economist.com/asia/2004/03/18/devil-may-care>.

¹³³ Choo Chin Low, *The Politics of Emigration and Expatriation: Ethnicisation of Citizenship in Imperial Germany and China*, 29 J. HIST. SOCIO. 385, 405 (2016).

¹³⁴ Liu Hong (刘宏), *Chinese Overseas and a Rising China: The Limits of a Diplomatic 'Diaspora Option'*, in CHINA AND INTERNATIONAL RELATIONS: THE CHINESE VIEW AND THE CONTRIBUTION OF WANG GUNGWU (Zheng Yongnian ed., 2010), 177, 184-85.

¹³⁵ Wang, *supra* note 6, at 318.

¹³⁶ Yang Shuming & Yin Hui (杨树明 & 印辉), *Shuangchong Guoji Jiqi Falv Shijian Jianlun Woguo Guojifa de Lifa Gaijin* (双重国籍及其法律实践——兼论我国《国籍法》的立法改进) [*Dual Nationality and Its Legal Practice: Debate on Revisions of Nationality Law in China*], 3 NANJING SHIDA XUEBAO (SHEHUI KEXUE BAN) (南京师大学报(社会科学版)) [J. NANJING NORMAL UNIV. (SOC. SCI.)] 30, 33 (2006).

nationality policy refer to the May 1998 violence in Indonesia¹³⁷ and the systematic discrimination against ethnic Chinese in Malaysia¹³⁸ as proof, arguing that it is the foreign nationality of the victims that prevented the Chinese government from providing substantive help.¹³⁹

The opposing side of the debate explicitly acknowledges the lack of protection for ethnic Chinese and detaches it from nationality policy. The philosophy behind the 1980 Nationality Law is that Chinese nationality legislation and the Chinese government, irrespective of its attitude towards dual nationality, could do little, if anything, to promote the welfare of ethnic Chinese abroad. In other words, the fate of ethnic Chinese would not be different under the *status quo* or dual nationality law. Cheng asks, “in an international system premised on the cornerstone of nation-states, should violent anti-Chinese incidents occur in the context of dual nationality, what measures would the Chinese government take (to protect these Chinese nationals)? If China is not able to intervene or intervenes in the wrong way (such as using military force), how does the policy shift make sense?”¹⁴⁰ He argues that the fate of ethnic Chinese who have long been rooted in a foreign country, similar to any other diasporic group around the globe, rests upon the society and the country they live in. In the end, no amount of Chinese power can solve the political and ethnic conflicts embedded at the heart of a foreign society. As Cheng put it, “the fundamental issue is the rights and obligations of a contributing people to participate in the construction of a new society after the independence of a new sovereign state, a new form of relationship between ethnic minority and majority, and the protection of civil rights and basic human rights.”¹⁴¹ Dual national or not, ethnic

¹³⁷ Zhou, *supra* note 6, at 64-65, 175-78, 241-52 (Two proposals at the National Chinese People’s Political Consultative Conference, in 1999 and 2004 respectively, cited the anti-Chinese violence in Indonesia.).

¹³⁸ Kuala Lumpur, *Race-Based Affirmative Action is Failing Poor Malaysians*, THE ECONOMIST (May 18, 2017), <https://www.economist.com/asia/2017/05/18/race-based-affirmative-action-is-failing-poor-malaysians>; Jay Hong Chew, *A Revision of Malaysia’s Racial Compact*, HARVARD POLITICS (Aug. 18, 2021), <https://harvardpolitics.com/a-revision-of-malaysias-racial-compact/>; Pusat Kommas, *Malaysia Racial Discrimination Report 2021*, PUSAT KOMAS (Mar. 21, 2022), <https://komas.org/fightracism-launch-of-the-malaysia-racial-discrimination-report-2021/>.

¹³⁹ Zhang Xin (张欣), *Shilun Zhongguo Youxian Chengren Shuangchong Guoji de Biyaoxing yu Kexingxing* (试论中国有限承认双重国籍的必要性与可行性) [*On the Necessity and Feasibility of China Limitedly Recognizing Dual Nationality*], 47 LILUN GUANCHA (理论观察) [THEORETIC OBSERVATION] 108, 108 (2007); Yang & Yin, *supra* note 136, at 33.

¹⁴⁰ Cheng, *supra* note 7, at 192-93.

¹⁴¹ Cheng, *supra* note 7, at 130-31.

Chinese will suffer as long as xenophobia lasts.¹⁴² “If revocation of Chinese nationality cannot eradicate the foreign country’s doubt towards ethnic Chinese, neither could restoration [of nationality].”¹⁴³ This line of argument alleges that dual nationality does not benefit ethnic Chinese in the context of ethnic conflict.

The third factor is the international competition for talent and economic resources, which reflects the utilitarian considerations of the party-state. It is not novel for the Chinese government to use citizenship structures as a policy tool to filter and select citizens, including returned overseas Chinese with desirable skills or resources.¹⁴⁴ While the Chinese nationality of an overseas Chinese is not in doubt, his rights to resettle in China and acquire household registrations still hinge upon approval by the government.¹⁴⁵ The Chinese government has implemented programs to attract international talents, especially overseas Chinese and ethnic Chinese abroad.¹⁴⁶ As the proportional share of ethnic Chinese decline in Asia and increase in the Americas and Europe,¹⁴⁷ the Chinese government has refocused its attention away from Southeast Asia toward the “new migrants” (*xin yimin*) in developed countries viewed as an asset to attract investment and talent.¹⁴⁸ Dual nationality would be hugely attractive to these individuals, but the Chinese government has not yet decided to shift to dual nationality. The current unsatisfactory substitution is *de facto* dual nationality (intentionally tolerated or not) through local citizenship proof that, in practice, preserves transnational mobility.

¹⁴² Xiao & Guo, *supra* note 73, at 586. The term “xenophobia” should be understood under the context that many ethnic Chinese has lived in the foreign country for many generations.

¹⁴³ Cheng, *supra* note 7, at 192.

¹⁴⁴ Jiaqi M. Liu, *Citizenship on the Move: The Deprivation and Restoration of Emigrants’ Hukou in China*, 47 J. ETHNIC & MIGRATION STUD. 557, 558 (2021); Chenchen Zhang, *Governing Neoliberal Authoritarian Citizenship: Theorizing Hukou and the Changing Mobility Regime in China*, 22 CITIZENSHIP STUD. 1, 11-20 (2018).

¹⁴⁵ Liu, *supra* note 144, at 565.

¹⁴⁶ HUIYAO WANG & LU MIAO, *CHINA’S DOMESTIC AND INTERNATIONAL MIGRATION DEVELOPMENT* 169-227 (2019).

¹⁴⁷ Peter S. Li & Eva Xiaoling Li, *The Chinese Overseas Population*, in ROUTLEDGE HANDBOOK OF THE CHINESE DIASPORA 15, 21 (Tan Chee-Beng ed. 2013) (“Along the way Asia’s proportional share of the Chinese overseas population has steadily declined from 88% in 1980 to 75% in 2009, while American continent’s share has increased from 8% to 19% in the same period.”).

¹⁴⁸ Mette Thunø, *China’s New Global Position: Changing Policies Toward the Chinese Diaspora in the Twenty-First Century*, in CHINA’S RISE AND THE CHINESE OVERSEAS 184, 192-94 (Bernard P. Wong & Tan Chee-Beng eds. 2018); Liu, *supra* note 134, at 184-85; CHINA AND INTERNATIONAL RELATIONS: THE CHINESE VIEW AND THE CONTRIBUTION OF WANG GUNGWU 177, 184-86.

A cautionary note is that people of Chinese descent overseas may not desire a second Chinese nationality in their resistance to homogenization.¹⁴⁹ The experiences of returned overseas Chinese in political turmoil in the 1960s and 70s are particularly memorable.¹⁵⁰ Many local-born Chinese, having succeeded in resisting both re-Sinicization and localization pressures, choose new identities or seek out their own unique place within society.¹⁵¹ As Wang Gungwu noted, he “has not accepted China’s view that China alone has the capacity to give the overseas Chinese what they need in order to remain Chinese.”¹⁵²

Fourth, on a microscopic level, the legislative sources and legal governance traditions of the PRC are split squarely equal. The current Chinese legal system draws upon China’s experience since 1949, China’s own legal traditions, socialist legal models, as well as selective borrowing from Western systems in its legal development.¹⁵³ The single nationality policy is the product of the Chinese government dealing with Chinese ethnicity and diaspora, handcrafted by the prominent leaders of the CCP, particularly Zhou Enlai.¹⁵⁴ Socialist countries around that time also adopted single nationality policies.¹⁵⁵ The adoption of single nationality marks a sharp turn away from the permanent allegiance doctrine in Qing and Republic of China eras, which were rooted in the traditions of blood connection. More recently, the growing global acceptance of dual nationality and quasi-dual nationality,¹⁵⁶ both in the West and certain Asian countries,¹⁵⁷ has pressured the single nationality principle.

Finally, it would be an oversimplification to characterize the nationality issue as a simple question stemming from mere technical

¹⁴⁹ STEVEN B. MILES, CHINESE DIASPORAS: A SOCIAL HISTORY OF GLOBAL MIGRATION 257-59 (2020); Zhou, *supra* note 6, at 329-483.

¹⁵⁰ GLEN PETERSON, OVERSEAS CHINESE IN THE PEOPLE’S REPUBLIC OF CHINA 141-68 (2012).

¹⁵¹ WANG GUNGWU, THE CHINESE OVERSEAS: FROM EARTHBOUND CHINA TO THE QUEST FOR AUTONOMY 92, 97 (2000).

¹⁵² Wang Gungwu, *A Single Chinese Diaspora?*, in DIASPORIC CHINESE VENTURES: THE LIFE AND WORK OF WANG GUNGWU 157, 163 (Gregor Benton & Hong Liu eds. 2004).

¹⁵³ Benjamin L. Liebman, *Authoritarian Justice in China: Is There a “Chinese Model”?*, in THE BEIJING CONSENSUS? HOW CHINA HAS CHANGED WESTERN IDEAS OF LAW AND ECONOMIC DEVELOPMENT 225, 233 (Weitseng Chen ed. 2017).

¹⁵⁴ ZHUANG GUOTU (庄国土), HUAREN HUAQIAO YU ZHONGGUO DE GUANXI (华人华侨与中国的关系) [THE RELATIONSHIP BETWEEN ETHNIC CHINESE, OVERSEAS CHINESE, AND CHINA] 254-55 (2001).

¹⁵⁵ GEORGE GINSBURGS, THE CITIZENSHIP LAW OF THE USSR 71-131 (1983).

¹⁵⁶ Maarten Vink & Arjan H. Schakel et al., *The International Diffusion of Expatriate Dual Citizenship*, 7 MIGRATION STUD. 362, 362-83 (2019).

¹⁵⁷ *Id.*

calculations of instrumentalists. Chinese nationalism or patriotism, irrespective of its complicated source or genealogy, has become an integral part of current Chinese politics. The issue of nationality cannot escape its framing. “Who is one of us” is thus inherently sensitive. This is complicated by the fact that China had its own worldview of *tianxia* (all under heaven), which fused with the imported concept of modern nation-states. China's modern international order is thus “a fusion of its traditional *tianxia* elements and Western elements of the international order,”¹⁵⁸ its identity a combination of historical great power and a developing state that has been a victim of Western imperialism,¹⁵⁹ its future an interaction between coastal openness and inland traditions.¹⁶⁰ The result is citizenship tied to territorial unity with a profound overtone of ethnonationalism as its context.¹⁶¹

Despite the inherent mix of Western and Chinese influences in China's worldview, as well as the struggle between conceptions of the nation-state and *tianxia* state,¹⁶² when it comes to the nationality of ethnic Chinese, acceptance of the nation-state and respect for the international order have prevailed in the past forty years. The modern Chinese state chooses territory over ethnicity as the formal criterion for national belonging.¹⁶³ History reminds us that dual nationality has the potential to be a source of international conflicts, such as the Nazi intervention in other states on behalf of ethnic Germans abroad¹⁶⁴ and the more recent example of ethnic Russians in post-Soviet countries.¹⁶⁵ It is hard to imagine that China would or should revert its course in light of these lessons.

¹⁵⁸ Zheng Yongnian, *Organizing China's Inter-State Relations from “Tianxia” (All-under-Heaven) to the Modern International Order*, *supra* note 148, CHINA AND INTERNATIONAL RELATIONS: THE CHINESE VIEW AND THE CONTRIBUTION OF WANG GUNGWU 283, 293.

¹⁵⁹ Niall Duggan, *A New Chinese National Identity: The Role of Nationalism in Chinese Foreign Policy*, in CHINESE NATIONAL IDENTITY IN THE AGE OF GLOBALISATION 161, 165 (Lu Zhouxiang ed. 2020).

¹⁶⁰ WANG GUNGWU, THE REVIVAL OF CHINESE NATIONALISM 17 (1996).

¹⁶¹ Bryan S. Turner & Chang Kyung-Sup, *Whither East Asian Citizenship?*, in CONTESTED CITIZENSHIP IN EAST ASIA: DEVELOPMENTAL POLITICS, NATIONAL UNITY, AND GLOBALIZATION 243, 245 (Chang Kyung-Sup & Bryan S. Turner eds. 2012).

¹⁶² WANG KE (王柯), CONG TIANXIA GUOJIA DAO MINZU GUOJIA: LISHI ZHONGGUO DE RENZHI YU SHIJIAN (从天下国家到民族国家: 历史中国的认知与实践) [FROM TIANXIA STATE TO NATION-STATE: THE COGNITION AND PRACTICE OF HISTORICAL CHINA] 318 (2020).

¹⁶³ Thunø, *supra* note 148, at 199.

¹⁶⁴ Jerry Z. Muller, *Us and Them: The Enduring Power of Ethnic Nationalism*, 87 FOREIGN AFFAIRS 18 (2008); Mark Mazower, *Minorities and the League of Nations in Interwar Europe*, 126 DAEDALUS 47, 55 (1997).

¹⁶⁵ James Hughes & Gwendolyn Sasse, *Comparing Regional and Ethnic Conflicts in Post-Soviet Transition States*, 11 REG'L & FED. STUD. 1-35 (2001).

A final observation centers on what *tianxia* thinking offers to the fiercely disputed issue of nationality. A critic immersed within the *tianxia* mindset would be deeply confused about the obsession with nationality since *tianxia* is a universal all-under-heaven ideology that is supposed to work for all mankind.¹⁶⁶ If the Chinese state truly values the blood connections deeply embedded in its past and the present relevancy of inclusiveness and openness in the *tianxia* thinking, it should find the idea of granting long-term residency rights or favorable visa policies to ethnic Chinese a perfect match.

C. Institutional Capacity and Systematic Dissonance

The chaotic handling of nationality derives from fragmentations in the governance system and the lack of institutional capacity and expertise.

The nationality regulation structure in China is fragmented. Article 15 of the Nationality Law established the division of nationality applications between the MPS branches within China and the MFA branches abroad.¹⁶⁷ The independence of the household registration department from the exit and entry department further contributes to this fragmentation problem.¹⁶⁸ In addition, such fragmentation exists not only horizontally across diplomatic, household registration, and immigration departments but also vertically at different levels within a department.¹⁶⁹ Since the MPS, the provincial level public security department, and the municipal level public security bureau each have their own exit and entry component, they sometimes disagree on an individual's nationality. Even exit and entry branches of the same level in different regions, faced with similar facts or the same case, may come to opposite conclusions.¹⁷⁰ These problems are not unique to nationality: the local citizenship regime in China has become fragmented as well,¹⁷¹ leading to highly localized and randomized enforcement. In some counties with lots of emigrants, local branches

¹⁶⁶ Zheng, *supra* note 158, at 302-07.

¹⁶⁷ Nationality Law, art. 15 (“Nationality applications at home shall be handled by the public security bureaus of the municipalities or counties where the applicants reside; nationality applications abroad shall be handled by China’s diplomatic representative agencies and consular offices.”).

¹⁶⁸ Habicht & Richter, *supra* note 102, at 38-39.

¹⁶⁹ Wang Pu & Zeng Fanjing (王璞 & 曾范敬), *Woguo Shixing Shuangchong Guoji de Bukexingxing Fenxi* (我国实行双重国籍制度的不可行性分析) [*The Infeasibility Analysis of Dual Nationality in China*], 37 WUJING XUEYUAN XUEBAO (武警学院学报) [J. ARMED POLICE ACAD.] 19, 21 (2021).

¹⁷⁰ *Id.*; Ye & Hu, *supra* note 15, at 130-31.

¹⁷¹ Ling Wu, *Decentralization and Hukou Reforms in China*, 32 POL’Y & SOC’Y 33, 33 (2013).

of the MPS unilaterally suspended the enforcement of regulations that require deprivation of household registration of the emigrants who have moved abroad.¹⁷²

Aside from structural asymmetries, many low-level MPS branches simply lack the capacity and expertise to apply nationality law. More than once, local MPS branches admitted that they did not know what nationality certification means and had to ask the NIA for help.¹⁷³ Those who did work on nationality issues have made obvious legal mistakes.¹⁷⁴ The immigration legal system in China is still predominately a matter of administrative management.¹⁷⁵ To local MPS officials, nationality issues are just one of the hundreds of issues within their jurisdiction and one that they encounter infrequently. The administrative officials are both unwilling and unable to bring clarity, and as a result, localized randomness dominates the practice of nationality administration.

CONCLUSION

More than forty years after the promulgation of Nationality Law, interpretation of the key terms and origins of disputes remains ambiguous in Chinese law. The lasting vagueness illustrates that the idea of modern citizenship stays more on the paper than in the hearts and minds of legislators and bureaucrats. The concept of modern citizenship implicates three main dimensions: a legal status defined by civil, political, and social rights and obligations; political agents actively participating in a society's political institutions; and the membership in a community that furnishes a distinct source of identity.¹⁷⁶ Chinese nationality nowadays lacks substance in all three

¹⁷² Liu, *supra* note 144, at 567.

¹⁷³ Jane21844, *Ruhe Banli Guoji Rendeng Shouxu* (如何办理“国籍认定手续”) [*How to Handle the Nationality Identification Procedures*], NATIONAL IMMIGRATION ADMINISTRATION (Jun. 16, 2020), <https://www.nia.gov.cn/Enquiry/publish/showQuestion.jsp?MZ=XnSxNYw79%2Fc2hhy1gwGCiQ%3D%3D> (A 16-year-old German teenager whose parents were ethnic Chinese German citizens sought permanent residency in China. The mother held Chinese nationality when the child was born, and the regulation requires nationality identification procedures for such cases. The public safety officials in Qiqihar city and Heilongjiang province did not know how to handle the nationality identification procedures. Shanghai exit and entry officials advised that the parents seek help from the NIA.).

¹⁷⁴ Ye & Hu, *supra* note 15, at 130, 132.

¹⁷⁵ Xiong Wenzhao (熊文钊), *Lun Zhongguo Yimin Falv Zhidu de Lishi Yanjin yu Zhidu Jiangou* (论中国移民法律制度的历史演进与制度建构) [*Historical Evolution and System Construction of the Chinese Immigration Legal System*], 171 *BIJIAOFA YANJIU* (比较法研究) [J. COMPAR. L.] 177, 180 (2020).

¹⁷⁶ Jaen L. Cohen, *Changing Paradigms of Citizenship and the Exclusiveness of the Demos*, 14 *INT'L SOCIO.* 245 (1999).

aspects. The legal status is uncertain and subject to the arbitrary administration of the government; the political participation is largely nominal; the prominence of local citizenship proof and the prevalence of *de facto* dual nationality devalue Chinese nationality.¹⁷⁷ Even the identification cards issued to citizens are called “resident identification.” The concept of modern citizenship with a series of rights and obligations vis-à-vis the state did not seep into the decision-making process and administrative practice related to nationality law. From this perspective, nationality seems insignificant. But it is meanwhile significant: the deep-rooted tradition of “blood is thicker than water,” the overseas Chinese policy aimed at expanding international influence, the rising narrative of nationalism, and the widespread emigration of wealthy individuals, the privileged class, and corrupt officials all contribute to the complexity.¹⁷⁸ As a result, the decision-makers turn to the “let it be” attitude to reserve strategic ambiguity. Such politically and socially sensitive topics have also consolidated into the strongholds of administrative agencies largely exempt from the legalization and the rule of law movement in the past forty years.

The Note systematically examined all relevant discussions and provided a comprehensive interpretation of the term “settled abroad.” “Settled abroad” should be equivalent to the right of permanent or long-term residency in a foreign country. Actual residence should not be a requirement for the application of Articles 5 and 9. The two potential exceptions to Article 9 are purchasing of passports without any stay in the foreign country and the acquisition of foreign nationality through undocumented emigration. The first exception should be limited to a few specified foreign countries to safeguard the seriousness of law and prevent abuse of police power. In practice, a clear pattern can be observed that Chinese courts do not scrutinize “settled abroad” when deciding nationality except for criminal cases. Chinese courts’ unfamiliarity with nationality law leads to low-quality legal reasoning in some cases. Training in this respect is urgent. The widespread invisible *de facto* dual nationality, and the procedural turmoil, can only be resolved by clear rules and closer coordination

¹⁷⁷ Choo Chin Low, *China and Taiwan*, in NATIONALITY LAW IN THE EASTERN HEMISPHERE: ACQUISITION AND LOSS OF CITIZENSHIP IN ASIAN PERSPECTIVE 117, 117 (Olivier Vonk ed., 2018).

¹⁷⁸ Biao Xiang, *Emigration Trends and Policies in China: Movement of the Wealthy and Highly Skilled*, TRANSATLANTIC COUNCIL ON MIGRATION (Feb. 2016), https://www.migrationpolicy.org/sites/default/files/publications/TCM_Emigration-China-FINAL.pdf; Southern Metropolis Daily, *Shuangchong Guoji Caozuo Shouduan Baoguang Liangzhong Shenfen Liangtou Zhan Haochu* (双重国籍操作手段曝光 两种身份两头占好处) [*Exposure of Dual Nationality Operation Methods: Two Identities with Advantages at Both Ends*], SINA.COM (May 9, 2012), <http://edu.sina.com.cn/a/2012-05-09/1753215232.shtml>.

and sharing of information between state organs. Finally, the history of nationality legislation since late Qing Dynasty proves that regardless of the political nature of the ruling regime, nationality issues will trouble China persistently. Nationality remains a sensitive and tangled topic in the unfinished journey of China toward modernization. One of its consequences is the absence of an amendment to the nationality law in the last forty years. The legislative inaction likely will continue into the near future.

APPENDIX

Appendix: 81 Publicly Available Cases on Article 9 of Nationality Law (2014-October 2021)¹⁷⁹

No.	1
Year	2021
Case Number	(2021) 辽 04 民终 235 号
Type of Case (Civil, Administrative, or Criminal) ¹⁸⁰	Civil
Cause of Action	Allocation of compensation for expropriation of contracted land
Level of Court (Basic, Intermediate, High, Supreme)	Intermediate
Jurisdiction	Liaoning, Fushun
Conclusion of the Court on Nationality	Unspecified
Whether the Party Has <i>De Facto</i> Dual Nationality by Retaining Local Citizenship Proof (Household Registration or Identification Card)	Unspecified
Whether at any Stage of the Proceedings the Party Presents Himself as Chinese National to the Court and the Court later find that He Has Foreign Nationality	Unspecified
The Foreign Country at Issue	Unspecified
Note	

¹⁷⁹ The cases are numbered in reverse chronological order with the latest cases on top.

¹⁸⁰ The author did not include other types of cases (e.g., cases of recognition and enforcement of foreign judgments or arbitral awards) since they do not involve an active dispute on the nationality of an individual under the Nationality Law.

2	3	4	5
2021	2021	2021	2021
(2021) 辽 01 民辖 235 号	(2021) 辽 01 民辖 220 号	(2021) 京 02 民辖终 180 号	(2021) 吉 24 民终 1179 号
Civil	Civil	Civil	Civil
Jurisdictional objection; Return of Original Property	Jurisdictional objection; Return of Original Property	Jurisdictional objection; Private lending	Allocation of compensation for expropriation of contracted land
Intermediate	Intermediate	Intermediate	Intermediate
Liaoning, Shenyang	Liaoning, Shenyang	Beijing, Daxing	Jilin, Yanbian Korean Autonomous Prefecture
Foreign	Foreign	Foreign	Foreign
No	No	Yes	Yes
No	No	Yes	No
Vanuatu	Vanuatu	Australia	South Korea
Centralized jurisdiction does not extend to foreign-related real estate cases. The court of the place where the real estate is located has jurisdiction.	Centralized jurisdiction does not extend to foreign-related real estate cases. The court of the place where the real estate is located has jurisdiction.		A rural resident had automatically lost his Chinese nationality and access to rural collective economic organization upon joining foreign nationality even though he had a valid household registration. He does not have any claim of compensation for expropriation.

6	7	8
2021	2021	2020
(2021) 辽 0191 民初 3753 号	(2021) 湘 0702 民初 230 号	(2020) 皖行终 78 号
Civil	Civil	Administrative
Post-divorce property dispute	Creditor's right of revocation	Administrative registration of household
Basic	Basic	High
Liaoning, Shenyang, Economic and Technological Development Zone	Hunan, Changde, Wuling	Anhui, Hefei
Foreign	Foreign	Foreign
Yes	Yes	Yes
Yes	Yes	No
Ireland	Saint Kitts and Nevis	Canada
Case dismissed without prejudice for inconsistent identity. The foreign party must bring lawsuit under foreign identity rather than Chinese identity.	Case dismissed without prejudice for inconsistent identity. The foreign party must bring lawsuit under foreign identity rather than Chinese identity.	The court concluded that household administrative rules do not expressly require cancellation of household when a Chinese citizen joins foreign nationality. However, the administrative agency may cancel household here per discretion.

9	10	11
2020	2020	2020
(2020) 粤 04 民终 1165 号	(2020) 京 01 民终 966 号	(2020) 辽 01 民终 14827 号
Civil	Civil	Civil
Confirmation of co-ownership	Contract dispute	Real property purchase contracts
Intermediate	Intermediate	Intermediate
Guangdong, Zhuhai	Beijing, Changping	Liaoning, Shenyang
Unspecified	Foreign	Foreign
Unspecified	Unspecified	No
Unspecified	Unspecified	No
Canada	Australia	Unspecified
<p>The Plaintiff brought lawsuit as a Chinese national and lost in first instance. He then appealed, alleging that he was a foreign national entitled to foreign-related proceedings. The appellate court rescinds the original judgment and remands for retrial.</p> <p>Two relatives of the seller had joined foreign nationality and lost Chinese nationality, but remained on the household registration of the house. The buyer sought revocation of such household registration. The court held that the buyer did not provide sufficient evidence to show the relatives were foreign nationals.</p>		

12	
2020	
(2020) 鲁 03 民终 1144 号	
Civil	
Private lending	
Intermediate	
Shandong, Zibo	
Foreign	
Yes	
No	
New Zealand	(1) In the previous first instance, appeal, and retrial proceedings, both parties participated as Chinese citizens. The Plaintiff then found out the foreign nationality of Defendant and appealed the retrial, alleging wrong identity, absence of foreign-relate proceedings, and invalid power of attorney. The court denied all claims. Given the forum selection clause and choice of law provisions in the contract, the issue has no bearing on the proceeding. (2) The Plaintiff argued that the shareholder agreement is invalid because Defendant (who pretends to be a Chinese citizen), as a foreigner, can only establish foreign invested enterprises under Chinese law. The Court held that the restriction on foreign investment is not a “ forceful compulsory rule” and thus does not render a contract void.

13	14	15	16
2020	2020	2020	2020
(2020) 鲁 03 民终 1143 号	(2020) 京 01 民终 5268 号	(2020) 京 0115 民初 18347 号	(2020) 辽 1122 民初 1145 号
Civil	Civil	Civil	Civil
Private lending	Statutory Succession	Private lending	Nullity of marriage
Intermediate	Intermediate	Basic	Basic
Shandong, Zibo	Beijing, Haidian	Beijing, Daxing	Liaoning, Panjin, Panshan
Foreign	Foreign	Foreign	Foreign
Yes	Yes	Yes	Yes
No	No	Yes	Yes
New Zealand	Canada	Australia	South Korea
	The fact that a legal heir is a foreign national does not affect statutory succession.	During first instance, the Defendant alleged, and the Plaintiff admitted that the Plaintiff is a foreign national. Case transferred to intermediate courts which have original jurisdiction.	The court mentioned that the party has settled in South Korea when determining nationality.

17	18
2020	2020
(2020) 桂 0405 民初 259 号	(2020) 桂 0405 民初 143 号之一
Civil	Civil
Unjust enrichment	Unjust enrichment
Basic	Basic
Guangxi Zhuang Autonomous Region, Wuzhou, Changzhou	Guangxi Zhuang Autonomous Region, Wuzhou, Changzhou
Foreign	Foreign
No	No
No	No
Thailand	Thailand

19	20	21
2019	2019	2019
(2020) 最高法行申 11360 号	(2019) 吉民终 370 号	(2019) 京民终 95 号
Administrative	Civil	Civil
Administrative Registration of Marriage	Action for nonparty's objection to enforcement; Property ownership dispute	Confirmation of qualification as shareholder
Supreme	High	High
Anhui, Wuhu	Jilin, Tonghua	Beijing
Foreign	Foreign	Foreign
Yes	Yes	Yes
Yes	Yes	Yes
Ireland	South Korea	United States
The registration of marriage by a former Chinese citizen based on her household registration is null and void since she did not fulfill the procedure of foreign-related marriage registration.	Once determined that one party was a foreign national, the High Court remanded for retrial.	Although the Plaintiff concealed the fact that he is a foreign national, registered as a Chinese shareholder of the company, and caused an administrative penalty, such actions do not affect the validity of the current shareholder registration.

22	23	24	25
2019	2019	2019	2019
(2019)京01民终10924号	(2019)鲁02行终672号	(2019)粤0303民初22946号之一	(2019)粤0112民初11201号
Civil	Administrative	Civil	Civil
Return of original property	Administrative registration	Compensation for property damage	Right to use rural residential lot
Intermediate	Intermediate	Basic	Basic
Beijing, Chaoyang	Shandong, Qingdao	Guangdong, Shenzhen, Luohu	Guangdong, Guangzhou, Huangpu
Foreign	Foreign	Foreign	Foreign
Yes	Yes	Yes	No
Yes	Yes	Yes	No
United States	United States	Canada	Australia
	Later discovered foreign nationality of a party does not negate the validity of power of attorney.	Inconsistent voluntarily withdrew identity, Plaintiff without prejudice.	Dismissed, subject matter non-justiciable

26	27	28	29
2019	2019	2019	2019
(2019) 鲁 0281 民初 8241 号	(2019) 粤 0106 民初 23826 号之一	(2019) 豫 0105 民初 4621 号	(2019) 冀 0609 民初 802 号
Civil	Civil	Civil	Civil
Private lending	Companies dispute	Succession disputes	Contract for assignment of claims
Basic	Basic	Basic	Basic
Shandong, Qingdao, Jiaozhou	Guangdong, Guangzhou, Tianhe	Henan, Zhengzhou, Jinshui	Hebei, Baoding, Xushui
Foreign	Foreign	Foreign	Foreign
Yes	Yes	Yes	Yes
Yes	Yes	Yes	Yes
Canada	Australia	Australia	Italy
The Plaintiff had won a monetary judgment against the Defendant (who was in Chinese identity). The Defendant submitted proof from Vancouver Consulate that he is a foreign national. Prior judgment vacated for wrong identity.	The Court on its initiative requested exit and entry records from the MPS and made a factual finding that a Chinese local citizenship proof and a Canadian passport belong to the same person.	Inconsistent identity, case dismissed without prejudice.	The court ruled that the Defendant had lost Chinese nationality since she held an Italian passport. Case transferred to proper jurisdiction.

30	31	32
2019	2019	2018
(2019) 沪 0114 民初 1336 号	(2019) 粤 0785 执异 32 号	(2018) 苏行终 1715 号
Civil	Civil	Administrative
Post-divorce property dispute	Right to use construction land; Property purchase contracts	Administrative Registration of Marriage
Basic	Basic	High
Shanghai, Jiading	Guangdong, Jiangmen, Enping	Jiangsu, Xuzhou
Foreign	Foreign	Foreign
Yes	Yes	Yes
No	No	No
Australia	Venezuela	Singapore
<p>A former Chinese citizen registered divorce under her Chinese identity. The Court ruled that even if the civil affairs bureau later realized the registration is void, it does not have the legal authority to take the initiative to revoke the registration absent requests.</p>		

33	34	35	36
2018	2018	2018	2018
(2018) 粤民申 3040 号	(2018) 京 01 执 602 号	(2018) 京 03 民终 499 号	(2018) 沪 01 民终 3186 号
Civil	Civil (Enforcement)	Civil	Civil
Liability for liquidation	Recognition and enforcement of arbitral awards	Contracts dispute	Labor contracts
High	Intermediate	Intermediate	Intermediate
Guangdong, Dongguan	Beijing, Shijingshan	Beijing, Chaoyang	Shanghai, Minhang
Chinese	Foreign	Foreign	Foreign
Yes	Yes	Yes	Yes
No	Yes	No	Yes
Singapore	Australia	United Kingdom	Australia
Any claim that one party is a foreign national must be supported by evidence.	The applicant acquired foreign nationality after an arbitral award had been enacted. Thus, he must apply for recognition and enforcement under his foreign identity.	The Plaintiff as a foreign national not residing in China needs to provide properly notarized identity documents to bring lawsuits.	Labor regulations require employment permits approved by the government for foreigners to work in China. Absent such permits, labor or employment relations never exist.

37	38	39
2018	2018	2018
(2018) 桂 0325 民初 1409 号	(2018) 京 0105 民初 2892 号	(2018) 黑 0110 民初 6724 号
Civil	Civil	Civil
Creditor' s right of revocation	Succession disputes	Rural property purchase contract
Basic	Basic	Basic
Guangxi Zhuang Autonomous Region, Guilin, Xing'an	Beijing, Chaoyang	Heilongjiang, Harbin, Xiangfang
Foreign	Foreign	Chinese
Yes	Yes	Yes
Yes	Yes	No
Argentina	United States	South Korea
Inconsistent identity, transferred to proper jurisdiction.		The court reviewed facts and concluded that evidence provided by the Plaintiffs (electronic data and telephone conversation recordings) are not enough to prove that the Defendant has acquired foreign nationality.

40	41	42	43
2018	2018	2018	2018
(2018) 吉 0202 民初 1039 号	(2018) 吉 0202 民初 1038 号	(2018) 粤 0304 民初 24896 号	(2018) 浙 1121 民初 5565 号
Civil	Civil	Civil	Civil
Conventional usufructs on rural land for agricultural operations	Conventional usufructs on rural land for agricultural operations	Labor dispute	Private lending
Basic	Basic	Basic	Basic
Jilin, Jilin, Changyi	Jilin, Jilin, Changyi	Guangdong, Shenzhen, Futian	Zhejiang, Lishui, Qingtian
Chinese	Chinese	Foreign	Foreign
Yes	Yes	No	Yes
No	No	No	Yes
South Korea	South Korea	United States	Italy
Defendant alleged circumstantial evidence (exit and entry records, party statement of travel history) to prove inconsistency and the existence of foreign passports. The court made a factual finding that the evidence is not sufficient.		The court mentioned that the party resided in the United States between 1997 and 2012 and acquired US nationality in 2012.	Inconsistent identity, case dismissed without prejudice

44	45	46
2018	2018	2018
(2018)京0108民初22286号	(2018)吉2401民初2699号	(2018)湘0102民初1925号之一
Civil	Civil	Civil
Private lending	Partnership agreement dispute	Contracts dispute
Basic	Basic	Basic
Beijing, Haidian	Jilin, Yanbian Korean Autonomous Region, Yanji	Hunan, Changsha, Furong
Foreign	No	Foreign
No	Yes	Yes
No	Yes	Yes
United States	South Korea	United States
Case transferred to proper intermediate jurisdiction	Inconsistent identity, case transferred to proper intermediate jurisdiction.	Inconsistent identity, case dismissed without prejudice

47	48	49
2018	2018	2018
(2018)吉0102民初1941号	(2018)浙0481民初7808号之一	(2018)粤0113民初4710号
Civil	Civil	Civil
Contracts dispute	Private lending	Private lending
Basic	Basic	Basic
Jilin, Changchun, Nanguan	Zhejiang, Jiaxing, Haining	Guangdong, Guangzhou, Panyu
Foreign	Foreign	Foreign
Yes	Yes	Yes
Yes	Yes	Yes
United States	Australia	Australia
When jurisdiction falls on the residence of Defendant and the Defendant has joined foreign nationality, his residence is where he actually lives instead of his previous household registration.		The court relied on a previous case in the same court in which the party was found to be a foreign national.

50	51
2017	2017
(2017) 最高法民辖终 125 号	(2017) 浙民终 610 号
Civil	Civil
Jurisdictional objection; Real estate development and operation contracts	Confirmation of invalid contract
Supreme	High
Guangxi Zhuang Autonomous Region, Nanning	Zhejiang, Lishui
Foreign	Foreign
Yes	Yes
Yes	Yes
Canada	Australia
The Supreme Court held that the fact that a former Chinese citizen retain valid household registration or identifications cards does not mean that they still have Chinese nationality.	A shareholder of a company was a Chinese national upon the initial establishment and registration of the company. Later he joined foreign nationality. The Court ruled that he is entitled to bringing a shareholder claim although his foreign identity does not match the registration record.

52	2017	(2017) 吉民申 3580 号	Civil	Allocation of compensation for expropriation of contracted land	High	Jilin, Yanbian Korean Autonomous Prefecture	Chinese	Yes	Yes	South Korea	The Court ruled that the Plaintiff may cut a share from the compensation of expropriation even though she joined foreign nationality under a fake name.
53	2017	(2017) 京行终 4196 号	Administrative	Revocation of administrative license	High	Beijing	Foreign	Yes	No	United States	See Part I.D.1.
54	2017	(2017) 粤 03 民终 10890 号	Civil	Real property purchase contracts	Intermediate	Guangdong, Shenzhen	Foreign	Yes	No	United States	A former Chinese citizen signed a contract under her Chinese identity to sell a house she owned to the Plaintiff and refused to fulfil the contract. The Court found that the contract is valid, and the seller has defaulted.

55	56	57
2017	2017	2017
(2017) 苏 01 民终 9562 号	(2017) 黑 10 民终 683 号	(2017) 吉 24 民终 1464 号
Civil	Civil	Civil
Return of original property	Confirmation of qualification as shareholder	Conventional usufructs on rural land for agricultural operations
Intermediate	Intermediate	Intermediate
Jiangsu, Nanjing	Heilongjiang, Mudanjiang	Jilin, Yanbian Korean Autonomous Prefecture
Foreign	Foreign	Foreign
Yes	No	No
Yes	No	No
United States	South Korea	South Korea
Foreign nationals need consulate notary to prove its identity.	Defendant appealed the case and alleged that the Defendant was a foreign national. The Court agreed and remanded for retrial under foreign-related procedures.	The Plaintiff admitted his foreign nationality. The Court collected exit and entry records to determine that he has settled in South Korea and ruled that he is thus not entitled to distribution of conventional usufructs.

58	59	60
2017	2017	2017
(2017) 粤 07 刑终 72 号	(2017) 粤 0391 民初 2840 号	(2017) 沪 0101 民初 3460 号
Criminal	Civil	Civil
Taking bribes, Embezzling, and Illegal possession of guns and ammunition	Liability for damage to interests of shareholders	Dispute over real property leasing contract
Intermediate	Basic	Basic
Guangdong, Jiangmen	Guangdong, Shenzhen, Qianhai Cooperation Zone	Shanghai, Huangpu
Chinese	Foreign	Foreign
Yes	Yes	No
No	No	No
United States	Germany	Germany
See Part II.F.	A former Chinese citizen used his Chinese household registration to register as a shareholder. Although it is in violation of relevant regulations, it does not prevent the court from concluding that the Chinese identity and the foreign nationality belong to the same person at issue.	A former Chinese citizen rented city public housing after Shanghai police department had revoked his household registration. The lease is void since public housing is reserved for those with Shanghai household registration.

61	62	63	64
2017	2017	2016	2016
(2017) 粤0404行初256号	(2017) 粤0105民初9013号	(2016) 浙民终228号	(2016) 沪02民终4874号
Administrative	Civil	Civil	Civil
Administrative inaction	Dispute on succession	Contracts dispute	Confirmation of qualification as shareholder
Basic	Basic	High	Intermediate
Guangdong, Zhuhai, Jinwan	Guangdong, Guangzhou, Haizhu	Zhejiang, Quzhou	Shanghai, Baoshan
Unspecified	Unspecified	Foreign	Foreign
Unspecified	Unspecified	Unspecified	Yes
Unspecified	Unspecified	Yes	Yes
United States	Germany	United States	South Africa
<p>The Plaintiff reported to the police department that a third party (who had civil disputes with him) had <i>de facto</i> dual nationality and complained that the police department took no action. The Court rules that the Plaintiff does not have standing.</p> <p>A former Chinese citizen and a fugitive at large joined foreign nationality. The Court held that the fugitive issue has no bearing on the contract dispute.</p> <p>The Court reasons that the fact that the Plaintiff has acquired foreign nationality demonstrates that she has settled abroad prior to acquiring foreign nationality.</p>			

65	66	67
2016	2016	2016
(2016)京02民终10361号	(2016)京02民终3694号	(2016)桂0312民初543号之一
Civil	Civil	Civil
Unjust enrichment	Confirmation of invalid contract	Contracts dispute
Intermediate	Intermediate	Basic
Beijing, Fengtai	Beijing, Xicheng	Guangxi Zhuang Autonomous Region, Guilin, Lingui
Foreign	Foreign	Foreign
Yes	Yes	Yes
Yes	Yes	Yes
Japan	Japan	Australia
The appellate court acquiescence reasoning by the trial court that identification cards is an issue of administrative management and does not preserve the Chinese nationality of those who have joined foreign nationality.		

68		69
2015		2015
(2015) 民四终字第 3 号		(2015) 沙民初字第 05525 号
Civil		Civil
Jurisdictional objection; Confirmation of invalid contract		Revocation of marriage
Supreme		Basic
Jiangsu, Wuxi		Liaoning, Dalian
Foreign		Foreign
No		Yes
No		No
Canada		Australia
<p>A commercial depositor of a bank (the Defendant) transferred its claims related to the deposits to the Plaintiff, a foreign national, after the Defendant realized that its deposits have been pledged as collateral by the Defendant without its permission. The Defendant argued that the transfer is a malicious move to circumvent the level rules of subject matter jurisdiction (Had the Plaintiff not been a foreign national, the case would have gone to an intermediate court instead of high court). The Supreme Court disagreed. The Plaintiff is only enjoying the procedural protection he is rightfully entitled to as a foreign national. There was no evidence of malicious intention.</p>		

70	71	72
2015	2014	2014
(2015) 静民一(民) 初字第 769 号	(2014) 二中民(商) 终字第 11571 号	(2014) 二中民(商) 终字第 11566 号
Civil	Civil	Civil
Partition of family property	Unjust enrichment	Unjust enrichment
Basic	Intermediate	Intermediate
Shanghai, Jingan	Beijing, Fengtai	Beijing, Fengtai
Foreign	Foreign	Foreign
No	Yes	Yes
No	Yes	Yes
United States	Japan	Japan
The Defendants have acquired foreign nationality and thus lost Chinese nationality before the signing of the disputed housing expropriation compensation agreement. They have no claim to the compensation for government expropriation of the house.	Identification card is an issue of administrative management and does not prevent those who join foreign nationality from losing Chinese nationality.	

73	74	75
2014	2014	2014
(2014) 泉民申字第 95 号	(2014) 浙甬行终字第 51 号	(2014) 海中法民一终字第 1801 号
Civil	Administrative	Civil
Unjust enrichment	Marriage administrative registration	Private lending
Intermediate	Intermediate	Intermediate
Fujian, Quanzhou	Zhejiang, Ningbo	Hainan, Haikou
Foreign	Foreign	Foreign
Yes	Yes	Yes
Yes	No	Yes
The Commonwealth of Dominica	Australia	United States
	A former Chinese citizen who has acquired foreign nationality registered marriage under Chinese identity. The trial court reasoned that no evidence showed that the husband settled abroad, so he retained Chinese nationality. The appellate court reversed. It avoided the settled abroad question by relying on MPS conclusions but declared the husband a foreign national and the marriage registration void.	Notary of consulates is required for foreign nationals without residence in China. Those who have residence in China may skip the procedural hurdle.

76	77	78
2014	2014	2014
(2014) 乐中行初字第 149 号	(2014) 静民三(民) 初字第 6 号	(2014) 乌民一初字第 36 号
Administrative	Civil	Civil
House administrative registration	Partition of co-owned property	Contracts for assignment of conventional usufruct on rural land for agricultural operations
Basic	Basic	Basic
Sichuan, Leshan, Shizhong	Shanghai, Jingan	Xinjiang Uyghur Autonomous Region, Urumqi, Urumqi
Foreign	Foreign	Foreign
Yes	Yes	Unspecified
Yes	No	No
United States	Australia	Kazakhstan
The Plaintiff identified herself as a foreign national without residence in China. Case dismissed for failure to comply with notary requirements for such party.	The Defendant refused to answer to court inquiry regarding his nationality. His co-defendants requested court order to pull his exit and entry records attached to his Chinese and foreign passports. The Court recognized his foreign nationality based on analysis and deduction of these records.	The former Chinese citizens who have joined foreign nationality do not have right to hold contracted land. Case dismissed for lack of standing.

79	80	81
2014	2014	2014
(2014) 闸民三(民)初字第211号	(2014) 通民初字第434号	(2014) 珠香法行初字第46号
Civil	Civil	Administrative
Real property purchase contracts	Allocation of compensation for expropriation of contracted land	Marriage administrative registration
Basic	Basic	Basic
Shanghai, Zhabei	Jilin, Tonghua, Tonghua	Guangdong, Zhuhai, Xiangzhou
Foreign	Foreign	Unspecified
Yes	Yes	Unspecified
No	Yes	Unspecified
Japan	South Korea	Suriname
A foreign national is not eligible to purchase public housing in Shanghai. The public housing purchase contract is thus void.	Former Chinese citizens who have joined foreign nationality is not entitled to compensation for expropriation of rural contracted land.	Case dismissed based on statute of limitations.