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By David McNeill

Chong Hyang Gyun has just written herself into the history books, but not for the reason she wanted.

The 54-year-old spent a decade fighting the Tokyo Metropolitan Government for the right to take a promotion exam, from which she was barred because of her South Korean nationality. If she had won, nationality would have ceased to be a factor in determining senior civil service jobs in Japan.

But in late January, the Supreme Court supported Tokyo's 1994 decision to bar her from promotion from her current post as a public health nurse to managerial level, saying: "Japanese nationality is necessary for positions which are linked to the exercise of public power." The landmark decision, which effectively rules that senior civil service jobs here should be filled only by Japanese, was greeted with dismay by anti-discrimination campaigners.

Teranaka Makoto, secretary general of Amnesty International, Japan, says that as a signatory to the U.N. International Convention on Eliminating Racial Discrimination, Japan has a duty to protect all residents from discrimination. "Just because foreign residents do not have Japanese citizenship, it does not mean that they do not have rights. The rights of all should be protected," he says. "Japan has a duty to do so under the U.N. agreements that it has signed."

Ms. Chong is today recovering from the subsequent media blitz, which was followed,

she says, by hate mail sent to her workplace. "We got about 300 messages that said things like 'Go Home' and 'We don't want to be lectured about our country by a Korean,'" she says. "Most of it seemed to have come via the same Web site."

Although she has spent 17 years in her current occupation and fulfills all other criteria for promotion, she insists she is not angry or bitter. "It took them seven years to come up with this ridiculous decision, you know? When I heard it, what came out were not tears, but laughter. I just think it shows this country's most reactionary elements.

"Foreign people should know that Japan does not respect human rights. We live in an era of immigration, but the court is saying: 'Don't come here or you will just be treated like a robot.'"

Reaction to the ruling was mixed. The Asahi said it was "backward-looking," a view echoed by the Japan Times, which said the challenge is to "make better use of talented people, Japanese or non-Japanese."

But an editorial (in Japanese) in the country's largest newspaper, the Yomiuri, said it was an "appropriate decision" supported by the Constitution, adding that the business of local government is connected to basic issues of "security" and "public peace," which means it should be carried out by Japanese citizens.

"Some of the media just ignored the ruling, although NHK and TBS were fair," she says. "One journalist came and said he supported what I did but his newspaper didn't print his article. The Yomiuri editorial was really awful. It doesn't say anything in the Constitution about barring foreigners from work. When I started this job nobody said I couldn't get promoted. I only learned afterwards."

She believes the ruling should concern Japanese citizens as much as it does her: "Everyone thinks of Article 9 when they talk about the Constitution, but there is absolutely no debate about the most important issue here: what it has to say about private rights of citizens. Local government officials should not have the power to decide these things. If they can do this to me, they can take away the power of others too."

Ms. Chong was born in Iwate Prefecture to a Japanese mother and Korean father, who she says was thrown out of Korea for anti-colonial activities. As the daughter of a subject of the Japanese empire, she began life as a Japanese citizen, but when World War 2 ended Koreans like her father were effectively rendered stateless when their citizenship was revoked.

Two decades later, like hundreds of thousands of Koreans who subsequently remained in Japan, the Chongs were given the opportunity to apply for citizenship to the Republic of Korea in 1965 when formal bilateral relations were reestablished. Her mother, having relinquished her Japanese citizenship, raised her daughter and son (now a university lecturer) as Koreans. When he reached adulthood, her brother decided to became a Japanese citizen, but Ms. Chong refused to take that route. "My brother and I live our lives differently and have some opposite opinions but we understand each other," she says.

Like many other countries, including the Netherlands, Belgium Finland, Denmark and Sweden, Japan does not confer what is known as jus solis, or automatic citizenship at birth, and refuses to recognize dual nationality. By contrast, immigration laws in France and the UK, colored by colonial history, do confer automatic citizenship on children, at least one of whose parents was born in their territories or who have settled permanently, and do recognize dual citizenship. Given its recent imperialist past, the best that can be said about Japan is that it is uncharitable in its treatment

of its ex-colonial subjects and their children, many of whom were brought here as slave laborers during World War II.

Paul Scalise, an economist who has written on the citizenship issue at www.japanreview.net, believes the time to confer automatic citizenship was thirty or more years ago. "If you give citizenship to the Koreans today you have to give it to the Chinese, and many of the Chinese in Japan have arrived since 1980. That's a slippery slope for the government." Recent research has suggested, however, that far from attempting to integrate postwar ethnic Koreans, well before the 1980s the government was working behind the scenes to expel "the enemy within."

Tessa Morris-Suzuki, professor of Japanese history at Australian National University, documents in a forthcoming Japan Focus report that the Japanese government threatened to cut the welfare benefits of 60,000 Zainichi Japan-born ethnic Koreans in the late 1950s, and then pressured the International Red Cross to persuade these people to 'return' to North Korea, although many were in fact geographically from the south of the peninsula. "Newly declassified documents indicate the likelihood of a conscious connection between these welfare cuts and schemes for a large-scale repatriation," she says.

Japan then hardly threw open the door to its reluctant Zainichi residents, but it is the employment rights of those dwindling numbers of remaining ethnic Koreans that is being tested in the Chong case, and here again Tokyo was less than generous. While it is clear that Japan is far from the only country that demands citizenship for senior government posts, the key question, as anthropologist Tom Gill puts it is: what is the "cut-off point" beyond which non-nationals are considered to have too much power. Ms. Chong believes the cut-off point in Japan is particularly low: "I was asking for the right to sit a simple general management test, which could possibly have led to a position as head of a medical section (eisei kacho). But I was not even given the choice to take the exam. I didn't have any particular position in mind; it was exclusion from the exam itself that bothered me. I wanted to open the gate."

While the central government, led by the Ministry of Home Affairs, generally enforces the nationality rule, however, "the republics have been restless" in the words of anti-discrimination campaigner Arudou Debito. In the mid-1990s, Kawasaki Prefecture, which employs a large number of ethnic Koreans and Chinese, announced it would "hire and promote based on qualification." And Arudou notes that Osaka and Kouichi briefly experimented with a similar policy. Kawasaki City says it does not have a managerial exam like Tokyo but a promotion exam, which non-Japanese are permitted to take, although it notes certain important exceptions, including tax and fire-prevention-related positions. "It's a mistake to talk about managers being promoted; they are appointed," said the spokesman. "If Ms. Chong worked in Kawasaki it is quite possible that she would be appointed to a managerial post because nursing is not considered a sensitive area."

Given the problems her citizenship has brought, though, the question asked by some is why Ms. Chong did not follow the route taken by her brother, a move she acknowledges would have made life simpler. "I'm often asked why I don't become Japanese and I say it is because of the history between the two countries," she explains. "I'd like Japan to acknowledge this history and apologize for it."

"The fact that a person like me with Korean nationality exists in Japan at all is the result of the colonial era and that's what I would like everyone to know; that's why I pledged to stay Korean. The harder this struggle got the more strongly I felt about that."

This explains why many people of South Korean descent in Japan sympathized with Ms. Chong, even while remaining ambiguous about her decision to fight. "We understand her feelings, but some Koreans feel uncomfortable with her decision to go public and believe she should be careful of her opinions because she is seen as a representative of Korea," says Kim Jongsoo of the Korean Youth Association in Japan.

"Koreans have this history of being forced to become Japanese and then having their citizenship taken away, so many feel aggrieved. Arguing that they should just shut up and become Japanese to get by in life is all well and good, but it is not that simple. I'm third-generation and my parents and grandparents have worked hard to protect my identity, so it is not easy for me to change over. Younger Zainichi Japanese though are more likely to take the easy way out."

Kim says the treatment of Ms. Chong in government circles was "odd." "She was not being asked to do a hugely sensitive job, just nursing management. Senior figures were saying things like, 'Well, what if there was a war? What would happen if the decision-maker was Japanese?' That struck me as ridiculously overblown and unreal. They kept talking about emergency situations and the whole talk was quite nationalistic."

Ms. Chong agrees, adding that when Tokyo Governor Ishihara Shintaro spoke about the case, he made the issue of nationality especially explicit: "He said something like, 'What if a decision about the life or death of a critically ill patient has to be made. How can we trust a foreign nurse?' That made me very angry, considering that it would not even be my decision, it would be a doctor's."

Keeping her pledge to stay Korean has been tough. "Well, to give an example, when I want to rent an apartment as a foreigner I need two Japanese guarantors, who have to produce evidence of their earnings and tax. Finding these people isn't easy. Even my name card [which makes clear that she is Korean] initially causes people to initially step back."

Discrimination forced her into her current occupation, she recalls. "I couldn't find corporate work because of my name so I became a white angel; angels don't have nationality," she laughs. "Or at least that's what I was told by my high school teacher. There are a lot of Koreans in nursing because it's a difficult, dirty job that Japanese don't want to do."

Ms. Chong says her deceased Japanese mother supported her fight. "Mum was more combative than I. She taught me from when I was very young that there is a lot of discrimination here and if I didn't fight it, Japan would stay the same. Of course, my motivation is that I don't want to be discriminated against, but I also don't want people to have the illusion that there is no discrimination here. That strikes me as dangerous."

January's Supreme Court ruling, which reversed an earlier decision in Ms. Chong's favor by the high court, means that her legal battle has ended, but she says she will keep fighting. "It's not about how I or other foreigners personally feel; it's about how we are going to change this society. Most people here do not have a clue about issues of oppression and human rights. The question for all of us is: how are we going to make them realize?"

Will she stay in her job? "Sometimes I want to leave, but I've planted roots here and it would be hard to start again. I don't hate Japan; I just want to make it a better place to live. People don't have a sense of how little freedom there is here. Will Japan change and catch up with the rest of the world or stay where it is? That's the era we are in now and that's the issue that my ruling leaves unanswered."

David McNeill prepared this article for Japan Focus. He is a Tokyo-based journalist and teacher, and a coordinator of Japan Focus. Posted on February 12, 2005.