CACV 424/2024, [2025] HKCA 192

On appeal from [2024] HKCFI 2671

**in the high court of the**

**hong kong special administrative region**

**court of appeal**

CIVIL APPEAL no. 424 of 2024

(on appeal from HCAL NO. 179 of 2020)

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| RE | NGUYEN THI HEN | Applicant |

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Before: Hon Chu VP and Au JA in Court

Date of Judgment: 4 March 2025

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JUDGMENT

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Hon Chu VP (giving the Judgment of the Court):

*Introduction*

1. This is the applicant’s appeal against the decision of Deputy High Court Judge Bruno Chan (“the Judge”) given on 3 October 2024[[1]](#footnote-1) refusing to give her leave to apply for judicial review. The intended judicial review is in respect of the decision the Torture Claims Appeal Board (“the Board”) dismissing her appeal against the decision of the Director of Immigration (“the Director”) which rejected her non‑refoulement protection claim.
2. Despite directions given by the Court, the applicant did not lodge any written submission to support the appeal. She had consented to the Court of Appeal disposing of the appeal on the papers without an oral hearing.

*The applicant’s claim*

1. The applicant is a Vietnamese national aged 47. She entered Hong Kong illegally and was arrested by the police on 2 August 2019. She subsequently raised a non-refoulement claim based on fear of being harmed or killed by a loan shark due to her inability to repay her debt. Her claim was set out in details in [6] of the Director’s decision.
2. In gist, the applicant claimed that she obtained a loan from a loan shark in 2018 in connection with a seedling business she jointly operated with her husband. The business was destroyed in a storm in April 2019 and the applicant was unable to keep up with the interest payment. In June and July 2019, the loan shark and his followers kept demanding for full repayment. They went to the applicant’s home and damaged the furniture. On another occasion, they assaulted the applicant and hit her husband with wooden sticks, breaking his leg and causing him to be hospitalized for two weeks. After hearing that the loan shark had killed a debtor for failing to make repayment, the applicant took her husband’s suggestion and fled to mainland China from where she sneaked into Hong Kong.

The Director’s and the Board’s decisions

1. By a Notice of Decision dated 8 October 2019, the Director rejected the applicant’s non-refoulement claim having regard to the torture risk[[2]](#footnote-2), BOR 2 risk[[3]](#footnote-3), BOR **‍**3 **‍**risk[[4]](#footnote-4) and persecution risk[[5]](#footnote-5).
2. The applicant’s appeal against the Director’s decision was heard before the Board on 4 December 2019, during which the applicant gave evidence and answered questions from the Board. By a decision given on 13 December 2019, the Board dismissed the appeal.
3. In gist, the Board considered that the applicant’s evidence on the loan was internally consistent. However, on the totality of her evidence, the Board was not satisfied that the requirements of the applicable grounds were made out. Specifically, the Board took into account that it was a private dispute, the Country-of-Origin information showed state protection was reasonably available, the applicant herself has never suffered any physical or mental injury, and the injury to her husband did not attain a minimum level of severity. The Board found there was no, or no real or substantial, risk of the applicant being subject to persecution for a convention reason, ill-treatment or torture, or violation of the BOR2 rights. The Board concluded that the applicant failed to prove her entitlement to non-refoulement protection under any of the applicable grounds.

The Judge’s decision

1. The applicant filed a Form 86 and an affirmation on 16 January 2020 to seek leave to judicially review the decision of the Board. She did not provide any grounds for seeking relief.
2. The Judge dealt with the leave application on the papers. By a Form CALL-1 dated 3 October 2024, he refused to give leave for the applicant to apply for judicial review, finding that her intended judicial review has no prospect of success.

*The appeal*

1. By a notice of appeal dated 9 October 2024, the applicant appealed the Judge’s decision to this court.
2. The grounds of appeal in the notice of appeal stated that: (1) the creditors and gangsters in Vietnam are cruel, violent and will readily kill people; the applicant will be tortured, beaten or killed by her creditor if she returns to Vietnam; (2) internal relocation is not feasible because the applicant will face many difficulties and obstacles, she will be disadvantaged in the labour market and she may not be able to adapt and make a living; (3) the gangsters will be able to track the applicant as they have a nationwide network and help from the corrupt government officials and police; and (4) the Director has disregarded the applicant’s human right.
3. The applicant also filed an affirmation in which she stated that there was a good ground of appeal that was not being considered at the leave application stage. We will not consider this affirmation as no leave has been given for the applicant to file new evidence in this appeal. In any event, the affirmation only makes a vague assertion and has not identified what is the ground of appeal referred to.

Our reasons for decision

1. The general principles regarding an appeal in a non‑refoulement case have been set out comprehensively by the Court of Appeal *in Nupur Mst v Director of Immigration* [2018] HKCA 524 at §14. In sum, the role of the court in a judicial review is not to provide a further avenue of appeal. The primary decision makers are the Director and the Board. Though in non-refoulement cases the court will adopt an enhanced standard in scrutinizing the decision of the Board due to the seriousness of issue at hand, the court should not usurp the role of the Board. Assessment of evidence and Country-of-Origin Information materials and risk of harm, state protection and viability of internal relocation are primarily within the province of the Board (and the Director). The court will not intervene by way of judicial review unless there are errors of law or procedural unfairness or irrationality in the decision of the Board.
2. We note that the Judge was mistaken when he stated in [8] of the Form CALL-1 that “the Board found material inconsistencies and discrepancies in the Applicant’s evidence that it doubted the credibility of her claim of fear of harm from her alleged creditor that caused her to leave her home country to come to Hong Kong to seek protection, that even if her claim were true that there was no reliable evidence of any real intention of her creditor to seriously harm or kill her other than to press her to repay her debts”. The Board in fact did not make any adverse finding on the credibility of the applicant’s claim[[6]](#footnote-6). It also did not make any finding on whether the applicant’s creditor had any intention to inflict serious harm on the applicant or to kill her.
3. Despite the above error of the Judge, we do not consider there are merits in the applicant’s appeal:
4. The applicant has not provided any ground for seeking relief in her Form 86 or supporting affirmation. She has not pointed to any error in the Board’s reasons and finding that on the totality of her evidence, she failed to make out a case for non-refoulement protection under any of the appliable grounds. She also did not identify any procedural unfairness in the proceedings before the Board or any irrationality in the Board’s reasoning and decision.
5. We have considered the Board’s decision and do not discern any error of law, irrationality or procedural irregularity.
6. In light of the above, the applicant’s intended judicial review does not have any prospect of success. Leave to apply for judicial review was rightly refused by the Judge.
7. As to the matters stated in the notice of appeal, they do not help to advance the applicant’s appeal. Firstly, they were not raised in the application made to the Court of First Instance. It is not the practice of this court to allow new grounds to be raised in the appeal, especially when the new grounds are fact sensitive. Secondly, the assertions made by the applicant are not supported by any evidence before the court. The applicant has also not provided any valid basis to dispute the Board’s assessment of the risk of harm to her if she were to return to Vietnam. Thirdly, the Board had, after considering the Country-of-Origin Information, found that state protection was reasonably available to the applicant, and this would reduce the risk of harm that the applicant might face.
8. For the above reasons, the applicant’s appeal is devoid of merits. Accordingly, we dismiss the appeal.

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| (Carlye Chu)  Vice-President | (Thomas Au)  Justice of Appeal |

The applicant, unrepresented, acted in person

1. [2024] HKCFI 2671 [↑](#footnote-ref-1)
2. This refers to the risk of torture or cruel, inhuman or degrading treatment or punishment under Article 3 of section 8 of the Hong Kong Bill of Rights Ordinance, Cap. 383. [↑](#footnote-ref-2)
3. This refers to the risk of being arbitrarily deprived of life under article 2 of section 8 of the Hong **‍**Kong Bill of Rights Ordinance (Cap 383). [↑](#footnote-ref-3)
4. This refers to risk of torture or cruel, inhuman or degrading treatment or punishment under Article **‍**3 of section 8 of the Hong Kong Bill of Rights Ordinance (Cap 383). [↑](#footnote-ref-4)
5. This refers to the risk of persecution with reference to the non‑refoulement principle under Article **‍**33 of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. [↑](#footnote-ref-5)
6. The Board’s finding on credibility is at [39] of its decision, which stated that “The Appellant did not present herself as particularly believable or unbelievable, but demeanour is rarely very useful. Her story is internally adequately consistent as to the money lending.” [↑](#footnote-ref-6)