HCAL 2494/2019

[2025] HKCFI 541

**IN THE HIGH COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**COURT OF FIRST INSTANCE**

CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST   
NO. 2494 OF 2019

\_\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

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| --- | --- | --- |
|  | Dang Van Thang | Applicant |
|  |  |  |
|  | and |  |
|  |  |  |
|  | Torture Claims Appeal Board /  Non-refoulement Claims Petition Office | Putative Respondent |
|  | and |  |
|  |  |  |
|  | Director of Immigration | Putative Interested Party |

\_\_\_\_\_\_\_\_\_\_\_\_\_

Before: Deputy High Court Judge K.W. Lung in Court

Date of Hearing: 20 January 2025

Date of Judgment: 4 March 2025

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| JUDGMENT |

*THE APPLICATION*

1. The applicant applies for leave to apply for judicial review of the Decision dated 27 June 2019 of the Torture Claims Appeal Board/Non-refoulement Claims Petition Office dismissing the applicant’s appeal against the Director’s Decision as described below (“the Board’s Decision”).
2. The applicant asked for a hearing. However, he was absent at the hearing on 20 January 2025. I shall deal with his application on paper.
3. Pursuant to Order 20, rule 8 and Order 53, rule 3(6) of the Rules of the High Court, Form 86 is amended to the effect that the proposed respondent is the Board and the Director of Immigration is the interested party.

*The applicant*

1. The applicant, aged 42, is a national of Vietnam. He last entered Hong Kong illegally on 16 June 2015 and surrendered to the Immigration Department on 18 June 2015. By written representation, he raised non-refoulement claim on 18 June 2015 on the basis that, upon refoulement, he will be harmed or killed by his creditor because he failed to repay his debt.
2. According to the applicant, he ran an aquatic farm business. In 2014, he borrowed 350 million Vietnamese currency from a loan shark. Because of typhoon, he lost his business and was unable to repay the loan. He turned back to the business as a fisherman. The loan shark and his subordinates were looking for him to demand repayment of the loan. He moved to various place to avoid them. In 2015, he left Vietnam for Hong Kong.
3. Details of his claim are set out at paragraph 6 of the Notice of Decision dated 1 September 2017 by the Director (the “Director’s Decision”).

*The Director’s Decision*

1. The Director considered the applicant’s claim in relation to the following risks:
   1. risk of torture under Part VIIC of the Immigration Ordinance, Cap 115, (“the Ordinance”) (“Torture risk”);
   2. risk of violation of the right to life under Article 2 of Section 8 of the Hong Kong Bill of Rights Ordinance, Cap 383 (“HKBOR”) (“BOR 2 risk”);
   3. risk of torture or cruel, inhuman or degrading treatment or punishment (“CIDTP”) under Article 3 of Section 8 of the HKBOR (“BOR 3 risk”); and
   4. risk of persecution by reference to the non-refoulement principle under Article 33 of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (“Refugee Convention”) (“Persecution risk”).
2. By way of the Director’s Decision, the Director dismissed the applicant’s claim. In elaboration, the Director found that (i) his dispute with his creditor was only a monetary dispute between them, with no state involvement; (ii) from the past experience, the probability of being serious harmed or killed by his creditor was very low; (iii) state protection would be available; and (iv) internal relocation would be viable. [11]-[18]

*The Board’s Decision*

1. The applicant appealed the Director’s Decision to the Board. On 23 May 2019, the Board conducted an oral hearing for his appeal.
2. Having considered the evidence, the Board dismissed his appeal upon the following findings:
   1. his oral evidence was different from his written statements in various significant aspects of the facts in support of his claim [27]; and
   2. the Board did not accept that he was indebted to the creditor and that he had operated the business.

*Application for leave to apply for judicial review of the Board’s Decision*

1. The applicant has filed Form 86 dated 28 August 2019 for leave to apply for judicial review of the Board’s Decision.
2. In his affidavit in support of his application, the applicant did not raise any specific reasons to challenge the Board’s Decision.

*DISCUSSION*

1. The role of this Court is supervisory, meaning that it ensures that the Board complied with the public law requirements in coming to the Board’s Decision on the applicant’s appeal. The Court will not usurp the fact-finding power vested in the Director and the Board. See *TK v Michael C Jenkins Esq and Director of Immigration* [2013] 1 HKC 526, §40 and *Nupur Mst v Director of Immigration* [2018] HKCA 524, §14 (1).
2. The Court will bear in mind that the Board’s Decision should be examined with rigorous examination and anxious scrutiny.
3. In *Re: Kartini* [2019] HKCA 1022, 9 September 2019, the Court of Appeal held:

“ 13. (1) … …Assessment of evidence and COI 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.”

1. The Board, for the reasons given above, found that the applicant’s claimed risks were unfounded. There is no valid ground from the applicant to challenge the Board’s Decision.
2. There is no reason that the Court should interfere with the Board’s finding of the facts.
3. The applicant fails to show that he has any realistic prospect of success in his proposed judicial review of the Board’s Decision.

*DISPOSITION*

1. I refuse to grant leave to the applicant to apply for judicial review of the Board’s Decision. Accordingly, I dismiss his application.

(K.W. Lung)  
Deputy High Court Judge

The applicant was unrepresented and did not appear.