HCAL 2512/2019

[2025] HKCFI 531

**IN THE HIGH COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**COURT OF FIRST INSTANCE**

CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST   
NO. 2512 OF 2019

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

BETWEEN

|  |  |  |
| --- | --- | --- |
|  | Do Thi Hoa | 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

|  |
| --- |
| JUDGMENT |

*THE APPLICATION*

1. The applicant applies for leave to apply for judicial review of the Decision dated 27 July 2016 of the Torture Claims Appeal Board/Non-refoulement Claims Petition Office (“the Board’s Decision”). However, the date of the Board’s Decision should be 26 January 2018 as there is no Board’s Decision dated 27 July 2016 on the file. Form 86 will be amended accordingly. Her application is late. Her application shall not be later than 3 months from the date of the Board’s Decision[[1]](#footnote-1), expiring on 26 April 2018. Her application was filed on 10 October 2019, which is late for more than 1 year and 9 months. This issue will be dealt with below.
2. The applicant requested a hearing. However, she was absent at the hearing on 20 January 2025. I shall deal with application on the papers.
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 Board’s Decision should be dated 26 January 2018 instead of 27 July 2016, the proposed respondent is the Board and the Director of Immigration is the interested party.

*The applicant*

1. The applicant, aged 56, is a national of Vietnam. She is an illegal immigrant. She lodged a non-refoulement claim by way of written representation dated 14 June 2014 on the basis that, if refouled, she would be harmed or killed by a money lender called Nguyen Thi Loan (“Nguyen”) because she was unable to repay a loan from her. As the applicant had appealed the Director’s 1st Decision to the Board only, I shall only set out the brief factual background of the Director’s 1st Decision in relation to her loan from Nguyen.
2. According to the applicant, she borrowed a loan of 100 million Vietnamese Dong from Nguyen for the medical expense of her husband who was suffering from a stroke and for her children’s education. Nguyen brought with her several people to go to her home to demand 400 million Dong 10 times between February 2013 and December 2013. She was unable to pay up. Nguyen and her people had taken her and her children to her place where she and her people slapped her children’s faces and hit her with a stick, breaking her arm. She fell unconscious. When she turned round, she found herself in hospital. She had to receive an operation on her arm and it took 4 months to recover. She had reported the matter to police. She did not know if the police had made investigation. She lived in her friend’s place in order to avoid Nguyen. There was a second occasion where the applicant met Nguyen on the street and Nguyen threatened to kill her if she did not repay her loan. On 10 March 2014, she left Vietnam and sneaked into China and subsequently sneaked into Hong Kong. She did not consider internal relocation is viable. Nor did she think police in Vietnam will protect her as she had tried before.
3. Details of the applicant’s story can be found in paragraph 6 of the Director’s Decision dated 3 March 2015 (“the Director’s 1st Decision”).
4. By Notice of Further Decision dated 17 May 2017, the Director also rejected the applicant’s claim on BOR 2 risk (“the Director’s 2nd Decision”)

*The Director’s Decisions*

1. The Director considered the applicant’s claim in relation to the following risks:
   1. 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”);
   2. risk of torture or cruel, inhuman or degrading treatment or punishment (“CIDTP”) under Article 3 of Section 8 of the HKBOR (“BOR 3 risk”);
   3. 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”); and
   4. risk of torture under Part VIIC of the Immigration Ordinance, Cap 115, (“the Ordinance”) (“Torture risk”).
2. By way of the Director’s 1st Decision, the Director dismissed the applicant’s claim on the Torture risk, BOR 3 risk and Persecution risk for the reasons that (i) the low intensity and frequency of past ill-treatment from Ms Nguyen is indicative of a small future risk of harm upon her return to Vietnam [12]-[13]; (ii) there is no evidence to show that the police had done nothing to her complaint [13]-[16]; and internal relocation is viable [17].
3. By way of the Director’s 2nd Decision, the Director also dismissed the applicant’s claim on BOR 2 risk as the applicant failed to establish her claim on BOR risk. The applicant has not appealed against the Director’s 2nd Decision.

*The Board’s Decision*

1. The applicant appealed the Director’s 1st Decision to the Board. On 4 November 2016, the Board conducted a hearing and the applicant appeared and answered the Board’s questions.
2. The Board, having considered the evidence, found:

“ 25. Having considered the evidence of the Appellant, I find the Appellant failed to establish in evidence that her suffering attained a minimum level of severity. Having considered carefully the complained acts, I am not satisfied the complained acts amount to ‘torture’.

…

33. … I am not satisfied that Nguyen was acting in the official capacity as required in the definition of ‘torture’.

…

41. … There was no evidence showing Nguyen is still looking for the Appellant and there was no evidence showing Nguyen would know if the Appellant returned to Vietnam. The Appellant had never reported the assault and threat of Nguyen for the second occasion on the street to police in person there is no evidence that the police of Vietnam would not protect the Appellant.

42. … I find the Appellant fails to establish there are substantial grounds for believing that she will be in danger if she returned to Vietnam, even if there is, there is available state protection to the Appellant.”

1. The applicant’s appeal was therefore dismissed and the Director’s decision was confirmed.

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

1. The applicant has filed Form 86 dated 10 October 2019 for leave to apply for judicial review of the Board’s Decision.
2. In the affirmation in support of her application, the applicant did not raise any specific reason to challenge the Board’s Decision.

*DISCUSSION*

1. As mentioned in paragraph 1, this application is late. In *AW v Director of Immigration and William Lam* CACV 63 of 2015, 3 November 2015, §27 the Court of Appeal held that for extension of time for making the application for leave to apply for judicial review, the Court has to consider (1) the length of delay; (2) the reasons for the delay; (3) the prospect of the intended appeal; and (4) the prejudice to the putative respondent if extension of time was granted. I shall consider the merits of the applicant’s case.
2. 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).
3. The Court will bear in mind that the Board’s Decision should be examined with rigorous examination and anxious scrutiny.
4. 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 applicant has failed to raise any valid ground to challenge the Board’s Decision. In my view, the Court has no reason to interfere with it.
2. The applicant therefore fails to show that she has any realistic prospect of success in her proposed judicial review of the Board’s Decision.

*DISPOSITION*

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

(K.W. Lung)  
Deputy High Court Judge

The applicant was unrepresented and did not appear.

1. . **Delay in applying for relief (O. 53, r. 4)**

   (1) An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made. *(L.N. 356 of 1988)*

   (2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding. [↑](#footnote-ref-1)