



Summary of Decisions

Director of Immigration ("Director") v Khan Mohammad Shadab HCMP 1552/2021 [2022] HKCFI 194	Director v Selamat- Hariyanti HCMP 1620/2021 [2022] HKCFI 195	Director v Mohammad Amin Uddin Mondol HCMP 1551/2021 [2022] HKCFI 196	Director v Sumon Miah HCMP 1476/2021 [2022] HKCFI 197
Director v Ramanathan Arunagitinathar HCMP 1472/2021 [2022] HKCFI 198	Director v Bansiles Jamaicha Baguindo HCMP 1473/2021 [2022] HKCFI 199	Director v Hussain Rafaqat HCMP 1626/2021 [2022] HKCFI 200	Director v Al Amin Shak Mohammad HCMP 1683/2021 [2022] HKCFI 201

Decisions	: The Director's Section 27 Applications Granted
Date of Hearings	: 30 December 2021 and 31 December 2021
Date of Decisions	: 31 January 2022

Background

1. The Defendants in the captioned 8 cases are non-refoulement claimants where each of their first non-refoulement claim ("**Original NRC**") had been rejected, and was finally and conclusively brought to an end after the two-tier statutory and administrative procedures followed by various attempts of unsuccessful legal challenges against the refusal of their Original NRCs (up to the Court of Final Appeal or Court of Appeal).
2. Subsequently, the Defendants each made a request to make a subsequent NRC to the Director under section 37ZO of the Immigration Ordinance (Cap. 115)¹ on substantively the same primary factual basis. The Director refused all of the requests on the ground that there was no significant change of circumstances since the final determination of the Defendants' Original NRCs ("**Refusal Decisions**").
3. The Defendants then each made a JR leave application to challenge the Director's Refusal Decision ("**JR Leave Application**").

¹ Relevantly, section 37ZO(2) of the Immigration Ordinance (Cap. 115) provides that "a person may make a subsequent claim if the person provides sufficient evidence in writing to satisfy an immigration officer that—

(a) there has been a significant change of circumstances since the previous claim was finally determined or withdrawn; and
(b) the change, when taken together with the material previously submitted in support of the previous claim, would give the subsequent claim a realistic prospect of success."



4. Meanwhile, in light of the pending JR leave applications as aforesaid, the Defendants' removal from Hong Kong have been suspended under the Government's removal policy.
5. Given the vexatious nature of Defendants' conduct, in September and October 2021, in each of the cases the Director applied for a vexatious litigant order against the Defendants under section 27 of the High Court Ordinance (Cap. 4) ("**Section 27 Applications**").²
6. The hearing of the Section 27 Applications were held before the CFI on 30 December 2021 and 31 December 2021 respectively.

Issue for determination

7. The issue for determination is the Director's Section 27 Applications.

Department of Justice's Summary of the Court's Decisions³

8. The CFI adopted the legal principles on an section 27 application which was recently visited by the Honourable Mr Justice Chow, JA (sitting as a CFI Judge) in *Director of Immigration v Etik Iswanti* [2021] HKCFI 1589 at §§31-35⁴. In particular, before the CFI may make a section 27 order, it must be satisfied that "the person against whom the order is sought has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings" ("**Condition**").
9. In all the 8 cases, the CFI held that the Condition was satisfied. The CFI noted

² Relevantly, the gist of section 27(2) of the High Court Ordinance (Cap. 4) is that the CFI may make a vexatious litigant order if it is satisfied that the person against whom the order is to be made has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings.

³ Full text of the CFI's Decision at:

- HCMP 1552/21: https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=142169&QS=%2B&TP=JU
- HCMP 1620/21: https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=142170&QS=%2B&TP=JU
- HCMP 1551/21: https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=142168&QS=%2B&TP=JU
- HCMP 1476/21: https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=142167&QS=%2B&TP=JU
- HCMP 1472/21: https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=142171&QS=%2B&TP=JU
- HCMP 1473/21: https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=142172&QS=%2B&TP=JU
- HCMP 1626/21: https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=142173&QS=%2B&TP=JU
- HCMP 1683/21: https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=142174&QS=%2B&TP=JU

⁴ Full text of *Etik Iswanti* at: https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=136391&currpage=T. A summary of that Decision is available at https://www.doi.gov.hk/en/notable_judgments/pdf/HCAL_411_2021_HCMP_602_2021e.pdf.



the following litigation conduct went to show that the Condition was satisfied⁵:-

- a. Advancing broad and vague assertions in the grounds of review/appeal without any elaboration on how they applied to the relevant decision the subject of review/appeal;
- b. Advancing grounds of review/appeal that were not capable of serious or viable argument;
- c. Some grounds of review/appeal were clearly misplaced, which suggested that the Defendant might have copied and pasted one of the circulating templates from another non-refoulement case;
- d. Advancing grounds of review/appeal that were nothing but a repetition of the factual basis of the Defendant's non-refoulement claim. This suggests a lack of understanding of the CFA's/CA's function on the Defendant's part and that he only saw the appeal as a further opportunity to re-argue his non-refoulement claim;
- e. Complaining against the decisions made by the Director and the Torture Claims Appeal Board / Non-refoulement Claims Petition Office ("TCAB/NCPO") when he appealed to the CA and sought leave from CA to appeal to the CFA, when both decisions were irrelevant at the appellate stages;
- f. Failing to attend the hearing before the TCAB/NCPO and did not provide an explanation upon request;
- g. Failing to file written submissions despite being requested to do so by the Registrar of Civil Appeal / Court of Appeal;
- h. Requesting to file a subsequent claim shortly after the Original NRC had been finally disposed of by the CFA, based on largely the same set of facts;
- i. Failing to put forward proper grounds, or even no ground at all, in the latest judicial review leave application against the subsequent claim decision.

10. Further, in all of the Section 27 Applications, the CFI agreed with the Director that the Defendants had instituted the proceedings for the collateral purpose of delaying their removal from Hong Kong.

11. In the circumstances, the CFI granted section 27 orders against all the 8 Defendants in the terms including that no legal proceedings relating to any non-refoulement claim of the Defendants shall be instituted by him/her without leave of the CFI, that all legal proceedings relating to any non-refoulement claim previously instituted by him/her shall not be continued without leave of the CFI,

⁵ See § 21 of HCMP 1472/21, §22 of HCMP 1473/21, §29 of HCMP 1476/21, §19 of HCMP 1551/21, §19 of HCMP 1552/21, §20 of HCMP 1620/21, §22 HCMP 1676/21, and §29 of HCMP 1683/21



and that the order shall cease to have effect at the end of 5 years.⁶

12. In order to bring home the message that habitually and persistently instituting vexation litigations would be met with appropriate costs orders, notwithstanding the alleged impecuniosity of the Defendants, the CFI also ordered costs against the Defendants.

Civil Division
Department of Justice
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⁶ On 7 February 2022, the CFI handed down a corrigendum for each of the 8 Decisions dated 31 January 2022, of which some typographical errors in each Decision were corrected. In particular, the corrigendum, *inter alia*, stated that the order granted against the Defendants should read as all legal proceedings relating to any non-refoulement claim previously instituted by him/her **shall not be continued** without leave of the CFI, as opposed to shall be continued. (Emphasis added)