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HCAL 51/2007
HCAL 105/2007
HCAL 106/2007
HCAL 107/2007
HCAL 125/2007
HCAL 126/2007

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO. 51, 105, 106, 107, 125, 126 OF 2007

BETWEEN

FB
Applicant
and

DIRECTOR OF IMMIGRATION
SECRETARY FOR SECURITY
1st Respondent
2nd Respondent

AND

HCAL 105/2007

BETWEEN

NS
Applicant
and

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DIRECTOR OF IMMIGRATION
SECRETARY FOR SECURITY

1st Respondent
2nd Respondent

AND

HCAL 106/2007

BETWEEN

M

Applicant

and

DIRECTOR OF IMMIGRATION
SECRETARY FOR SECURITY

1st Respondent
2nd Respondent

AND

HCAL 107/2007

BETWEEN

RO

1st Applicant

MO

2nd Applicant

YO (by his father and next friend RO)

3rd Applicant

WO (by his father and next friend RO)

4th Applicant

and

DIRECTOR OF IMMIGRATION
SECRETARY FOR SECURITY

1st Respondent
2nd Respondent

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AND

HCAL 125/2007

BETWEEN

PVK Applicant
and

DIRECTOR OF IMMIGRATION 1st Respondent
SECRETARY FOR SECURITY 2nd Respondent

AND

HCAL 126/2007

BETWEEN

ND Applicant
and

DIRECTOR OF IMMIGRATION 1st Respondent
SECRETARY FOR SECURITY 2nd Respondent

(Heard Together)

Before: Hon Saunders J in Chambers
Dates of Hearing: 12, 13, 23 February and 19 March 2009
Date of Ruling: 9 April 2009

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R U L I N G

Introduction

1. The judgment in this matter was handed down on 5 December 2008. Leave was reserved to the parties to apply if they were unable to come to agreement on the declarations that were to be made consequent upon the decision. In the event the parties were unable to come to terms and came before me. In the course of the argument agreement was reached and declarations were made on agreed terms.

2. A costs order nisi was also made and the Applicants have sought to vary that costs order. Again, during the course of argument, agreement was reached between the parties as to the terms of a costs order which was duly made.

3. The only matter outstanding is an application by the Applicants for a supplemental judgment dealing with one ground upon which the judicial review was originally sought, namely that there was procedural unfairness by virtue of there being no guidelines or mandate requiring a timely determination of a CAT claim; (the delay issue).

4. This ground is contained in the applications of NS, (HCAL 105/2007), M, (HCAL 106/2007), RO & Ors, (HCAL 107/2007), PVK, (HCAL 125/2007), and ND, (HCAL 126/2007). It was not contained in the grounds of the first Applicant, FB, (HCAL 51/2007).

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5. At paragraph 15 of the judgment I outlined what I described as “five subheadings upon which, in each case the Applicants say procedural unfairness arises.” In the case of FB there were five subheadings, but the question of delay was not specifically dealt with. In cases of M, RO & PVK there were five pleaded subheadings, of which delay was one. In the case of NS there were six pleaded subheadings, of which delay was one.

6. In the course of the judgment I expressly recognised that the 6 cases were brought as test cases, collectively challenging the system adopted by the Respondents in dealing with CAT claims. Although there were a number of references to delay on the part of the Respondents in the judgment handed down, the delay issue was not dealt with as a specific separate section in the judgment.

7. Now the Applicants say that a specific section dealing with delay was omitted from the judgement by oversight, that oversight arising from the particular way in which the issue of delay was pleaded in the five different cases.

8. Mr Kat relied upon the discretionary power of the court in its inherent jurisdiction, and under O 20 r 11, to correct a judgment prior to perfection of the Judgment an order. He asks that a supplementary judgment be delivered, dealing specifically with the issue of delay.

9. Mr Mok opposes the application on both practical and jurisdictional bases.

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10. I am satisfied that it is not necessary for me to deliver a supplementary judgment. The issue of delay on the part of the Respondents has been the subject of a number of critical references throughout the course of the reasons that have been handed down.

11. There is no dispute that following the decision of the Court of Final Appeal in *Prabhakar*, CAT claims are to be accorded a high standard of fairness. I am satisfied that it is completely plain from the terms of the judgment that has been delivered that an integral part of the required high standard of fairness must be that claims under CAT must be dealt with expeditiously. No further reasons are required for that to be obvious.

12. In the course of argument during the substantive hearing, Mr Mok did not seek to argue against the general proposition that appropriate expedition is an integral part of the required high standard of fairness. Instead he confined his submissions to the particular delay in respect of particular applicants.

13. Each of the Applicants has succeeded in the judicial review, and I am informed from the bar that the Respondent is in the process of putting in place a system of assessment that it believes will meet the appropriate high standard of fairness. It is able to do so now with the assistance of the judgment has been delivered. When that new system is in place, the Applicants will have their claims re-assessed.

14. Mr Kat says the Applicants are entitled to reasons for each ground upon which they sought judicial review. I do not agree. It is common for a court, in finding in favour of a particular party on one

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ground, not to deal in further detail with other grounds. The statements made in the reasons already delivered are, in my view, quite sufficient to make it plain that had the question of delay be dealt with under a separate heading the Applicants would have succeeded on that ground as well. Having succeeded on other grounds, there is no need to take the matter further.

15. For these reasons the application for a supplementary judgment is refused.

16. Mr Kat complained about the length of time that it is taking since the delivery of the judgment to put a new system in place. Mr Mok reminds me that this is not something which can be done overnight. While I accept Mr Mok's reminder, this is not a matter which can be left to labour through many levels of bureaucratic committee or inter-departmental consultation. Just as the Respondents accept that appropriate expedition in the examination of a CAT claim is an integral part of the high standard of fairness required by *Prabhakar*, so must they accept that the establishment of a proper scheme for the examination of claims must be undertaken with appropriate expedition.

17. On the evidence before me at the present time I am not able to say that the Respondents have delayed unreasonably in establishing a proper scheme. However I do note that four months has now passed since the Respondents received the judgment in this case. I would expect that a new scheme should be in place very soon.

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18. In all the circumstances, the Applicants having largely succeeded on their arguments in respect of both the form of the declarations and costs, and the Respondent having successfully resisted a supplementary judgment, there will be an order nisi that there be no order for costs on the subsequent days of the hearing.

(John Saunders)
Judge of the Court of First Instance
High Court

Mr Nigel Kat instructed by Messrs Barnes & Daly, for the Applicants in each case

Mr Johnny Mok SC, and Ms Rachel Lam, instructed by the Department of Justice, for the 1st & 2nd Respondents in each case