

HONG KONG / JUDGMENT

RE HOSSAIN LAL CHAID

[2026] HKCA 961**COURT**

Court of Appeal

DECIDED

19 May 2026

CASE / FILE NUMBER

CACV208/2026

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CACV 208/2026, [2026] HKCA 961 On Appeal From [2026] HKCFI 1191 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CIVIL APPEAL NO. 208 OF 2026 (ON APPEAL FROM HCAL NO. 766 OF 2021)

RE: HOSSAIN LAL CHAID Applicant

Before: Hon Chu VP and Hon Cheng J in Court Date of Hearing: 5 May 2026 Date of Judgment: 19 May 2026

J U D G M E N T

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

Introduction

This is the applicant's appeal against the decision of Deputy High Court Judge Bruno Chan ("the Judge") given on 27 February 2026 refusing his application for leave to apply for judicial review against the decision dated 1 April 2021 of the Torture Claims Appeal Board ("the Board") dismissing his appeal against the decision dated 28 December 2020 of the Director of Immigration ("the Director") which rejected his non-refoulement claim having regard to the torture risk, BOR 3 risk, persecution risk and BOR 2 risk grounds.

Background

The applicant is a national of Bangladesh born in 1994. He entered Hong Kong illegally on 19 April 2020 and was arrested by the police for theft and illegal entry on 21 July 2020. On 9 August 2020, he lodged a non-refoulement claim on the basis that if he returned to Bangladesh, he would be harmed or killed by members of the Awami League (“AL”) as he was a supporter of its rival, the Bangladesh Nationalist Party (“BNP”). Details of the applicant’s claim, the basis of his claim and the arguments advanced before the Board as well as the Board’s reasons for rejecting his appeal have been set out in the Board’s decision. The Board determined the applicant’s appeal against the Director’s decision without an oral hearing as the applicant had requested that his appeal be considered without a hearing. In dismissing the appeal, the Board accepted that the applicant was a victim of assaults by members of the AL due to his BNP membership, but found that his claimed fear of being killed was undermined by the low frequency and lack of severity of the attacks, and was further reduced by the cessation of his political activities and absence from the country for over 1.5 years. The Board further found his delay in seeking protection (which was only after his arrest for theft) suggested that the threat was not as serious as he claimed. Based on the country-of-origin information (“COI”), the Board also found that reasonable state protection was available and internal relocation to cities like Chittagong, Sylhet, or Rajshahi was viable and not unreasonable. The Board thus concluded that the applicant failed to establish the threshold required for protection under the applicable grounds. The Judge’s decision By a Form 86 filed on 26 May 2021, the applicant sought leave to judicially review the Board’s decision. In support of his application, the applicant contended that (1) the decisions of the Director and the Board were not reasonable and fair, (2) his right to life is protected under the Basic Law and the Bill of Rights, and (3) he should be protected from extra-judicial killings which he will face if he were refouled to his country. The Judge heard the application at a hearing held on 10 February 2026. By a Form CALL-1 dated 27 February 2026, the Judge refused his application for the reasons set out in [13] to [18]. In summary, the Judge considered that the Board had given thorough and detailed analysis and reasoning for finding the evidence did not show the AL supporters had any real intention to harm or kill the applicant and there was no reasonably arguable basis to challenge the Board’s findings. The Judge further held that there was no public law error in the Board’s decision, and concluded that the intended judicial review had no prospect of success. This appeal By a Notice of Appeal filed on 9 March 2026, the applicant appeals the Judge’s decision to this Court. The grounds of appeal stated that the decisions of the Board and the Director were unfair, his life is still under threat and the police will not help him. The applicant’s written submission states that: (1) the Director and the Board had wrongly assessed his claim; (2) he is entitled to protection under the BOR 2 risk ground as he would face extra-judicial killing in his home country; (3) the act of the authorities in disposing of non-refoulement cases quickly is discriminatory and unacceptable; (4) the Director unfairly rejected his claim in failing to give proper weight to the presence of state acquiescence and the absence of state protection; and (5) the Board acted unreasonably, irrationally and was procedurally unfair in relying heavily on the COI and failing to have regard to his personal background and experience. The applicant made no oral submissions at the hearing of the appeal. Our reasons for decision In assessing the merits

of the appeal, we shall have regard to the legal principles which this Court has adopted in dealing with appeals in non-refoulement cases: see *Nupur Mst v Director of Immigration* [2018] HKCA 524 at [14]; *Re Md Shohel Sheak* [2018] HKCA 714 at [13]; and *Re Limbu Birkhaman* [2019] HKCA 50 at [11]. In particular, the role of the Court in a judicial review is not to provide a further avenue of appeal. 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. In the determination of an appeal against the refusal of leave by the Court of First Instance, the Court of Appeal will only examine the decision of the judge in light of the grounds advanced by the applicant. If no viable ground is put forward to reverse the judge's decision, the appeal should be dismissed. It is not the role of this Court to examine the decision of the Board afresh as if the appeal were a fresh application for judicial review. We are of the view that the grounds and submissions made by the applicant do not amount to viable grounds of appeal. First, as held in *Re Moshin Ali* [2018] HKCA 549, the decision of the Director is no longer susceptible to judicial review once an appeal to the Board has been pursued and the Director's decision has been superseded by the Board's decision. It is therefore not open to the applicant to challenge the Director's decision by way of judicial review. Hence, insofar as the applicant seeks to challenge the Director's decision in this appeal by his written submissions, he is bound to fail. Second, the arguments advanced by the applicant are general assertions unsupported by particulars, and it has not been shown how they relate to his claim. They also do not engage with the reasons of the Board in finding that his evidence failed to show he would face a real risk of harm under any of the applicable grounds. Third, the assertion that the Board relied heavily on the COI without considering the applicant's personal background and experience cannot stand in light of the Board's thorough consideration of his personal background and his account on the political incidents and conflicts. The Board found on the basis of his own evidence that his past harm did not reach the level of severity or frequency as to entitle him to protection under the applicable grounds. These are findings of fact open to the Board based on the evidence it received and for the reasons it gave. It is well-established that assessment of evidence, COI, risk of harm, state protection and viability of internal relocation are primarily within the province of the Board as the primary decision maker. The Court, in its supervisory role, will not intervene by way of judicial review unless there are errors of law, procedural unfairness or irrationality in the decision of the Board: *Re Kartini* [2019] HKCA 1022. Fourth and significantly, the applicant has not identified with particulars any error in the reasoning of the Judge or advanced any viable grounds of appeal against the Judge's decision. We are satisfied that the Judge had given proper and adequate reasons for holding that the intended judicial review had no prospect of success. There is no proper basis for us to disturb the Judge's decision. For the above reasons, the appeal has no merits. Accordingly, we dismiss the appeal. (Carlye Chu) Vice-President (Yvonne Cheng) Judge of the Court of First Instance The applicant, unrepresented, acted in person.

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Prepared on 28 October 2026 · Esheria