

HONG KONG / JUDGMENT

Re Nurul Wahyuni

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CACV 645/2026, [2026] HKCA 1421 On appeal from

[2026] HKCFI 3012 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CIVIL APPEAL NO 645 OF 2026 (ON APPEAL FROM HCAL 151/2023)

RE: NURUL WAHYUNI Applicant

Before: Hon Barma JA and Leung J in Court Date of Hearing: 6 August 2026 Date of Judgment: 27 August 2026

J U D G M E N T

Hon Leung J (giving the Judgment of the Court): 1. This is an appeal against the decision of Deputy High Court Judge (Non-refoulement Claims) Connie Lee (“the Judge”) given on 5 June 2026 [1] (“the Leave Decision”) refusing to grant leave for the applicant to apply for judicial review. The intended judicial review was against the decision of the Torture Claims Appeal Board/ adjudicator of the Non-Refoulement Claims Petition Office (“the Board”) dated 23 November 2022 (“the Board’s Decision”) whereby the applicant’s appeal against the decision of the Director of Immigration dated 31 August 2021 rejecting the applicant’s non-refoulement claim was dismissed. 2. The applicant is a national of Indonesia. Her background, basis of claim and the Board’s reasons have been set out in the Board’s Decision [2] as well as the Leave Decision at [10]. They will not be repeated. 3. After considering the documents filed by the applicant as well as the oral submission she made at the hearing of the leave application [3] , the Judge dismissed the application for the reasons stated at [4]-[14] of the Leave Decision. Appeal to this court 4. In her Notice of Appeal dated 16 June 2026, the applicant stated, among other things, that she disagreed with the Leave Decision and that the decision was “very unfair” rendering her liable to be removed from Hong Kong. She contended that her “case” was not determined fairly (without elaboration or providing particulars) and that it would be unsafe for her to return to her home country. 5. In her written submission dated 23 July 2026, the applicant raised several complaints against the Judge, including that she erred in failing to “appreciate the significance” of the

applicant's non-refoulement claim and that she did not adhere to "a high standard of fairness" (again, without elaboration or particulars). Further, the applicant complained that she was prejudiced by reason of a lack of legal representation and language assistance in the proceedings below. 6. At the eve of the hearing of the appeal, on 5 August 2026, the applicant informed the Court by letter that she had on 3 August 2026 applied for legal aid. A Memorandum of Notification of an Application for Legal Aid was filed into Court in the afternoon of 5 August 2026. That triggered the stay of proceedings in this appeal pursuant to section 15(4) of the Legal Aid Ordinance, Cap 91. 7. Notwithstanding the stay of proceedings, section 15(4) provides for the Court's discretion to order otherwise, including lifting the stay. In exercising its discretion, the Court will consider, among other things, any inordinate delay on the part of the party in applying for legal aid and the explanation for that. The Court must also balance the interests of proper case management and the proper administration of justice. 8. At the hearing on 6 August 2026, the applicant appeared in person. 9. In the course of the hearing, this Court inquired with the applicant as to the reasons for her indisputably belated application for legal aid. The applicant explained that she would like to wait for the processing of her dependent visa, that she did not know how to apply for legal aid and required assistance from her "friend". She added that a private lawyer who assisted or has assisted her did not inform her of the relevant procedure. 10. In our view, the explanation of the applicant is unacceptable in justifying the belated application for legal aid, which only served to disrupt the proceedings in this appeal at the last minute. In any event, prior to her application for legal aid, the applicant, by herself or with assistance, was apparently capable of lodging her documents and written submissions advancing her contentions. In the interests of administration of justice and proper case management, this Court decided to lift the stay of proceedings. The hearing of the appeal proceeded as scheduled. 11. As regards her appeal, the applicant had nothing to add to the matters already set out in the documents which she has lodged with the Court. Discussion 12. The principles governing appeals in non-refoulement cases are set out in *Nupur Mst v Director of Immigration*

[2018] HKCA 524 at [14]. In particular, in an appeal against refusal of leave to apply for judicial review in non-refoulement cases, 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. Assertions by the applicant of fear, if refouled, do not constitute proper grounds of appeal: *Re Saldua Dorothy Trifalgar*

[2022] HKCA 627 at [6]. 13. The Court's role is not to examine the decision maker's decision afresh as if it were a fresh application for judicial review. Nor is an appeal the occasion for regurgitating arguments advanced and rejected by the judge or for running arguments which could and should have been raised but were not raised before the judge. In the determination of an appeal, the Court of Appeal focuses on the decision of the judge, and the Court will only reverse that decision if an appellant could demonstrate that the judge made errors of law or failed to take account of relevant matters already placed before the judge or was otherwise plainly wrong: *Re Kartini*

[2019] HKCA 1022 at [13]. 14. The applicant has failed to identify any error on the part of the Judge and thus failed to raise any viable ground of appeal. The points advanced by the applicant were bare assertions. 15. In the present case, the Board found that the applicant was unable to establish on the evidence the alleged risk of harm, from her husband upon refoulement, by reason of her extra-marital affair with another man in Hong Kong. In any event, the Board took the view that suitable options of internal relocation were available to the applicant in order to minimise any risk of harm. These were factual findings open to the Board on the evidence, and were sufficiently canvassed and considered by the Judge in the Leave Decision at [4]-[14]. We see no basis to interfere. 16. The applicant has failed to demonstrate how the Board had acted unlawfully or procedurally unfairly in reaching its Decision, or how such Decision could be said to be Wednesbury unreasonable. 17. We are not persuaded by the applicant's complaint about prejudice caused by her lack of legal representation. As this Court has repeatedly held, it does not follow that the high standards of fairness applicable require that a non-refoulement protection claimant would be absolutely entitled to legal representation at all stages of the screening process or the legal proceedings ensuing therefrom: see *Re Zunariyah*

[2018] HKCA 14 ; *Re Zahid Abbas*

[2018] HKCA 15 ; *Re Tariq Farhan*

[2018] HKCA 17 ; *Re Lopchan Subash*

[2018] HKCA 37 ; and *Re Ahmed Syed Rafiq*

[2018] HKCA 178 . 18. We are equally not persuaded by the applicant's complaint about the apparent lack of language assistance. As mentioned, she was (whether by herself or with the assistance of others) quite capable of lodging comprehensible English documents and submission with the Court as well as those in the previous processing of her claim. 19. As the applicant advanced no viable grounds of appeal against the Judge's decision, and there is no merit in the appeal, we dismiss the appeal accordingly. (Aarif Barma) Justice of Appeal (Simon Leung) Judge of the Court of First Instance The applicant, unrepresented, appearing in person [1]

[2026] HKCFI 3012 [2] https://legalref.judiciary.hk/doc/judg/html/vetted/other/en/2023/HCAL000151_2023_files/the_Board's_Decision.pdf [3] See Leave Decision, [3].

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