

HONG KONG / JUDGMENT

RE PABILING AILENE CAPILAR

[2026] HKCA 951

COURT

Court of Appeal

DECIDED

14 May 2026

CASE / FILE NUMBER

CAMP18/2024

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CAMP 18/2024, [2026] HKCA 951

On appeal from [2023] HKCFI 2956

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

MISCELLANEOUS PROCEEDINGS NO 18 OF 2024

(ON AN INTENDED APPEAL FROM HCAL 1688/2023)

RE:

PABILING AILENE CAPILAR

Applicant

Before: Hon Cheung JA and Barma JA in Court

Date of Judgment: 14 May 2026

J U D G M E N T

Hon Barma JA (giving the Judgment of the Court):

This is an application for extension of time to appeal against the decision of DHCJ Bruno Chan (“the Judge”) dated 18 January 2024 (“the EoT Decision”) refusing to extend time for the applicant to appeal against his decision dated 16 November 2023 (“the Leave Decision”) refusing to grant leave to 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 21 June 2023 (“the Board’s Decision”) dismissing the appeal against the decision of the Director of Immigration dated 28 April 2022 rejecting the applicant’s non-refoulement claim.

The applicant’s background, the basis of her claim and the Board’s reasons in reaching the Board’s Decision have been set out by the Judge in the Leave Decision at [1]-[9], which will not be repeated.

The applicant did not request for an oral hearing for the leave application. After considering the documents filed by the applicant, the Judge dismissed the application for the reasons stated at [10]-[15] of the Leave Decision.

The present application for extension of time to appeal

According to the court’s record, a copy of the Leave Decision and a sealed copy of the Judge’s order was sent by post to the applicant at her last known address on 16 November 2023, which was not returned undelivered.

Pursuant to Order 53 rule 3(4), the applicant had 14 days to lodge an appeal. The applicant did not file a Notice of Appeal within 14 days from the date of the Leave Decision.

Subsequently, the applicant made an application in the court below for an extension of time to appeal against the Leave Decision, which was dismissed by the Judge for the reasons stated in the EoT Decision.

By a Summons filed on 26 January 2024, the applicant renewed her application for an extension of time to appeal before this court. Although in the Summons the applicant purported to seek leave to appeal against the EoT Decision, we shall treat it as a renewed application for an extension of time to appeal against the substantive Leave Decision, by which leave to apply for judicial review was refused.

In the Summons and her supporting affidavit, the applicant merely acknowledged the fact that her intended appeal is now out of time, and she asked the court to consider “the facts” she has apparently raised in her appeal.

In her written submissions dated 7 February 2024, the applicant stated that she did know “know the time limit of appeal” and that as “a lay person” she did not have “knowledge of law”. She reiterated that the problem in her home country was genuine, as well as contending (without elaboration) that the Board had failed to take into account relevant considerations and materials to her claim.

Having considered the papers, we are satisfied that this application can properly be dealt with on the papers without the need for an oral hearing. We have, therefore, determined the applicant's application on the basis of the documents filed.

Discussion

The Leave Decision was sent to the last known address of the applicant, but was not returned undelivered. The inference to be drawn is that the applicant has had notice and knowledge of the Judge's order and the contents of the Leave Decision in the period within which she was permitted to lodge an appeal. In any event, it was incumbent upon the applicant to notify the court of a change of address, if any, as soon as possible. The consequences of failure to do so must lie with her.

We are therefore of the view that the applicant has proffered no reasonable reason or explanation for the delay in bringing the intended appeal, nor has she explained how and when she had come to learn of the contents of the Leave Decision.

This notwithstanding, we have proceeded to consider the merits of the intended appeal.

As this court has often stated, an appeal to the Court of Appeal is not a fresh application for judicial review. It is necessary to identify some error on the part of the judge that would justify this court in intervening: see *Nupur Mst v Director of Immigration* [2018] HKCA 524 at [14]. 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. An appeal is not 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 court or was otherwise plainly wrong.

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 unsupported by particulars or evidence. In any event, general assertions of fear if refouled do not constitute proper grounds of appeal: *Re Saldua Dorothy Trifalgar* [2022] HKCA 627 at [6].

In the present case, the Board found the applicant to be an incredible witness by reason that there were inconsistencies and contradictions in material aspects of her evidence which formed the bases of her alleged fear of harm upon refoulement. In any event, adequate state protection and suitable options of internal relocation were available to the applicant in order to minimise the risks of harm, if any. 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 [9]-[15]. We see no basis to interfere.

Accordingly, 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.

For these reasons, we do not see any prospect of success in the intended appeal. This court will not grant an extension of time for a hopeless appeal. The Summons filed on 26 January 2024 is accordingly dismissed.

(Peter Cheung)

(Aarif Barma)

Justice of Appeal

Justice of Appeal

The applicant acting in person

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