

HONG KONG / JUDGMENT

RE: TOCABEN ALBEN DALMACIO

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CACV 289/2026, [2026] HKCA 1237 On Appeal From

[2026] HKCFI 1175 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CIVIL APPEAL NO 289 OF 2026 (ON APPEAL FROM HCAL NO 552 OF 2021)

RE: TOCABEN ALBEN DALMACIO Applicant

Before: Hon Au JA and Eugene Fung J in Court Date of Judgment: 22 July 2026

J U D G M E N T

Hon Au JA (giving the Judgment of the Court): 1. This is the applicant's appeal against the order of Deputy High Court Judge (Non-refoulement Claims) Jeffrey Chau ("the Judge") dated 12 March 2026 (

[2026] HKCFI 1175) ("the Leave Decision") refusing his application for leave to apply for judicial review ("the Leave Application") against the decision of the Torture Claims Appeal Board/ Non-refoulement Claims Petition Office ("the Board") dated 28 January 2021 ("the Board's Decision"), whereby the Board dismissed his appeal/petition against the decisions of the Director of Immigration ("the Director") respectively dated 18 February 2015 and 18 May 2017 ("the Director's Decisions"), refusing his non-refoulement claim. 2. This appeal was scheduled to be heard on 27 May 2026. Despite the directions from the Court dated 23 March 2026 ("Directions"), the applicant failed to lodge written submission by the stipulated time. Accordingly, by paragraph 11 of the Directions, the hearing of the appeal was vacated and the Court will now deal with this appeal on paper. 3. The applicant is a national of the Republic of the Philippines. The basis of his non-refoulement claim is, if refouled, he would be harmed or killed by his creditor. He also said that his father ill-treated him because he was gay. The applicant's background, the basis of his claim and the arguments advanced before the Board, as well as the Board's reasons for rejecting his appeal are all set out in the Board's Decision: see [4] of the Leave Decision. The Judge also

sets out in detail his reasons for refusing the Leave Application: see [5] - [10] of the Leave Decision. We will not repeat the details herein. 4. By the Notice of Appeal filed on 23 March 2026, the applicant asserted: “I am appealing my claim application as I am not satisfied with the decision of the Court of First Instance in dismissing my leave to apply for judicial review.” 5. As mentioned above, the applicant failed to lodge his written submissions in support of his appeal. DISCUSSION 6. The relevant legal principles governing appeals in non-refoulement cases are set out in *Nupur Mst v Director of Immigration*

[2018] HKCA 524 at [14]. 7. 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. The court’s role is not to examine the decision maker’s decision afresh as if it were a fresh application for judicial review. See *Nupur Mst v Director of Immigration*

[2018] HKCA 524 at [14(6)]. 8. Given that the applicant merely stated his disagreement with the Leave Decision without condescending upon particulars and failed to advance any proper ground of appeal, his appeal is a non-starter. We see no basis to interfere with the Leave Decision. 9. Accordingly, the applicant’s appeal against the Leave Decision has no merit and is dismissed. (Thomas Au) Justice of Appeal (Eugene Fung) Judge of the Court of First Instance The applicant acting in person

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