

HONG KONG / JUDGMENT

RE VU THI LY

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CACV 643/2026, [2026] HKCA 1419 On appeal from

[2026] HKCFI 3256 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF APPEAL CIVIL APPEAL NO 643 OF 2026 (ON APPEAL FROM HCAL
1863/2023)

RE: VU THI LY 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 Michael Wong (“the Judge”) given on 3 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 29 September 2023 (“the Board’s Decision”) whereby the applicant’s appeal against the decision of the Director of Immigration dated 8 August 2022 rejecting the applicant’s non-refoulement claim was dismissed. 2. The applicant came from Vietnam. 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 [15]-[19]. They will not be repeated. 3. The applicant did not request for an oral hearing. After considering the documents filed by the applicant for the leave application, the Judge dismissed the application for the reasons stated at [11]-[23] of the Leave Decision. Appeal to this court 4. In her Notice of Appeal dated 16 June 2026, the applicant stated, amongst other things, that she disagreed with the Leave Decision. She complained that her claim was not scrutinised “properly” by the Court. She further claims that she would be killed by her enemies if she is refouled. 5. In her written submission dated 24 June 2026, the applicant raised several complaints against the Judge, including that he erred in law by not having applied “the principle of irrationality” and “the principle of procedural unfairness” as well as not having analysed her claim properly in his consideration of the Board’s

Decision. She repeated that she would face hardship and even death consequence upon refolement as her enemies “are very dangerous”. 6. The applicant was absent from the hearing of the appeal on 6 August 2026. We will therefore determine the appeal on paper and on the basis of the matters set out in the documents lodged with the Court. Discussion 7. 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 refoled, do not constitute proper grounds of appeal: *Re Saldua Dorothy Trifalgar*

[2022] HKCA 627 at [6]. 8. 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]. 9. The applicant has failed to identify any error on the part of the Judge and thus failed to raise any viable ground of appeal. 10. In the present case, the Board found that the applicant was unable to establish on the evidence an alleged risk of harm from her creditor Nguyen Van Thanh and his associates by reason of her failure to repay a loan. The threats and assaults she allegedly suffered did not meet the threshold of a genuine and substantial risk of harm. In any event, the Board took the view that suitable options of internal relocation were available to the applicant in order to minimise 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 [11]-[23]. We see no basis to interfere. 11. 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. 12. 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, absent [1]

[2026] HKCFI 3256 [2] https://legalref.judiciary.hk/doc/judg/html/vetted/other/en/2023/HCAL001863_2023_files/the_Board's_Decision.pdf

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