

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

Civil Appeal No. 374 of 20 2026

(On Appeal from HCAL No. 209 of 2022)



BETWEEN

Nguyen Thi Xoa

Applicant

Torture Claims Appeal Board / Non-refoulement
claims Petition office

And

Putative Respondent

Director of Immigration
Appeal Bundle Index

And

Putative Interested Party

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374
CACV 374/2026

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL

High Court Accounts Office
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09/04/2026 02:53 PM
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Civil Appeal No. 374 of 20 26

(a) (On Appeal from HCAL 209 of 2022)

Applicant: 1,045.00
Fees Paid: 1,045.00

Nguyen Thi Xoa
and

BETWEEN

(b)(1) Torture claims Appeal Board / Non-refoulement
Claims Petition office and
Plaintiff(s) Putative
Respondent
Defendant(s)

(c)(1) Director of Immigration
Putative Interested
Party

NOTICE OF APPEAL

Take notice that (a) (pursuant to the leave granted by * His / Her Honour Judge/ the Honourable * Mr / Madam Justice _____ on the _____ day of _____ of 20 _____), the Court of Appeal will be moved as soon as the above-named * Plaintiff(s) / Defendant(s) Nguyen Thi Xoa acting in person can be heard.

On appeal from the Judgment or Order herein of *His/ Her Honour Judge/ the Honourable * Mr / Madam Justice Connie Lee given on the 27 day of Nov of 2026, whereby it was adjudged / ordered that the leave to apply for Judicial Review be refused

(e)(3) For an Order that the said * Judgment / Order may be set aside and that would allow the above applicant to pursue in applying the appeal.

And for an Order that the * Plaintiff(s) / Defendant(s) _____ pays to the * Plaintiff(s) / Defendant(s) _____ the costs of this appeal.

(e)(3) And further take notice that the grounds of this appeal are that I do not agree with the decision of the Court of First Instance. The court did not scrutinize my claim properly. Despite my problem in my home country is very severe the court of First Instance and the Torture claims Appeal Board rejected my claim. The decision makers considered my claims as a simply. If I return to my country I will be killed by my enemies.

General Reference
(a) Insert lower court's case number.
(b) Insert name(s) of Plaintiff(s)
(c) Insert name(s) of Defendant(s)

(a) State the Order to be appealed against.

(e) State the particulars of order sought.

(e) State the grounds of appeal

General Reference

And further take notice that *[the Plaintiff(s) or Defendant(s) or as the case may be] proposes that this appeal be assigned to the *[List of Final Appeals or List of Interlocutory Appeals].

Dated this 09 day of Apr, 2026.

Signed

Xoa
Nguyen Thi Xoa
(Plaintiff(s) / Defendant(s))

(1) Insert name of the person taking out this Notice.

This Notice was taken out by the Plaintiff(s) / Defendant(s) (1) Nguyen Thi Xoa acting in person, whose address for service is

(2) Insert address of the person taking out this Notice.

(2) Room E, 4/F, Kam Men Mansion, 15 Tseng Choi Street, Tuen Mun, N.T. Telephone No: 53193527

(3) State the names and addresses of all persons / solicitors on whom this Notice is to be served.

The following are the names/addresses of all persons / solicitors on whom this Notice is to be served:

To: (3)
Name: _____

Address: _____

Name: _____
Address: _____

Foot-notes:

- * Delete whichever is inapplicable
- (1) Or see lower court documents for reference.
- (2) Where leave to appeal is required, the Notice of Appeal should recite the judge who granted leave.
- (3) If the space here is insufficient, blank paper may be used and attached to this Notice.

CACV 374 / 2026

Certificate of service

I, _____, have served this

Notice of Appeal on the [Plaintiff(s) /

Defendant(s) _____]

by ordinary post to _____

on _____, 20____.

(Signed) _____

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE
REGION
COURT OF APPEAL

(Civil Appeal No. 374 of 2026)

(On Appeal from HCAL No. 209 of 2022)

Nguyen Thi Xoa

Applicant

BETWEEN

and

Top type claims, Appeal Board / Plaintiff
Non-refoulement claims, Petition Office Respondent
and

Director of Immigration

Defendant(s) / Relative
Interested
Party

NOTICE OF APPEAL

I, _____, have served this Notice of Appeal on the Registrar of the District Court at the Registry on 6/F, Wanchai Law Courts, 12 Harbour Road, Wanchai, Hong Kong by hand on _____, 20____ /

(Signed) _____

Dated: 09 day of Apr, 2026

Filed on: 09 day of Apr, 2026

Xoa

Nguyen Thi Xoa

*(Plaintiff(s) / Defendant(s) _____) in person

(Address for service) Room E, 4/F,

(Tel.No.)

Kam Men Mansion,
15 Tseng Choi Street,
Tuen Mun, N.T.

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST NO. 209 OF 2022

BETWEEN

Nguyen Thi Xoa Applicant

and

Torture Claims Appeal Board / Putative
Non-refoulement Claims Petition Office Respondent

and

Director of Immigration Putative
Interested Party

BEFORE DEPUTY HIGH COURT JUDGE
(NON-REFOULEMENT CLAIMS) CONNIE LEE IN COURT
ORDER

IN THE MATTER of Order 53, rule 3 of the Rules of the High Court

AND IN THE MATTER of an Application of the Applicant for Leave to Apply for Judicial Review

AND UPON reading the Notice of Application for Leave to Apply for Judicial Review filed herein on 14 April 2022 for an order of certiorari

AND UPON reading the Affirmation of Nguyen Thi Xoa filed herein on 14 April 2022 together with the exhibit referred therein

AND UPON hearing the Applicant appearing in person

IT IS ORDERED that: -

- 1. Form 86 be amended, naming only the Torture Claims Appeal Board/Non-refoulement Claims Petition Office as the Putative Respondent and the Director of Immigration as the Putative Interested Party.

R

4

2. The application herein for leave to apply for judicial review be dismissed.

Dated the 27th day of March 2026



IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO. 209 OF 2022

BETWEEN

Nguyen Thi Xoa

Applicant

and

Torture Claims Appeal Board /
Non-refoulement Claims Petition Office

Putative
Respondent

and

Director of Immigration

Putative
Interested Party

ORDER

Filed on the 27th day of March 2026

Nguyen Thi Xoa
(The Applicant)

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST No. 209 of 2022

BETWEEN

Nguyen Thi Xoa Applicant

and

Torture Claims Appeal Board/
Non-Refoulement Claims Petition Office Putative Respondent

and

Director of Immigration Putative Interested Party

Application for Leave to Apply for Judicial Review
NOTIFICATION of the Judge's decision (Ord. 53 r. 3)

Following:

- consideration of the documents only; or
- consideration of the documents **and** oral submissions by the Applicant in open court;

Order by **Deputy High Court Judge (Non-refoulement Claims) Connie Lee:**

1. *Form 86 be amended, naming only the Torture Claims Appeal Board/Non-refoulement Claims Petition Office as the Putative Respondent and the Director of Immigration as the Putative Interested Party.*
2. *The application herein for leave to apply for judicial review be dismissed.*

Observations for the Applicant:

Introduction

1. By Form 86 filed on 14 April 2022, the Applicant seeks leave to apply for judicial review (the "Leave Application") of the decision of the Torture Claims Appeal Board/Non-refoulement Claims Petition Office (the "Board") dated 25 March 2022 (the "Board's Decision"). By that decision, the Board confirmed the decision of the Director of Immigration dated 27 October 2021 (the "Director's Decision"), which had rejected her non-refoulement claim on all applicable grounds under the Unified Screening Mechanism (USM).

2. The Applicant's background, the basis of her claim and the arguments she advanced had been set out in detail in the Board's Decision. It is not necessary for me to repeat the same

here. Unless otherwise specified, the abbreviations and descriptions used in the Board's Decision, the hyperlink¹ to which is included below, are also adopted herein.

3. The Applicant attended the oral hearing scheduled before me and indicated that she had nothing else to add.

Discussion

4. Judicial review does not operate as a further avenue of appeal. The Leave Application operates as a "filtering" process and there is no requirement or expectation to give elaborate reasons for my decision. The primary decision makers are the Director of Immigration (the "Director") and the Board. Though in non-refoulement cases, the Court will adopt an enhanced standard in scrutinizing the decision of the Board due to the seriousness of the issue at hand, the Court should not usurp the role of the Board. Assessment of evidence, country of origin information (COI) materials, risk of harm, state protection and viability of internal relocation are primarily within the province of the Board (and the Director). The Court will not intervene by way of judicial review unless there are error of laws, procedural unfairness or irrationality in the decision of the Board.²

5. In seeking to challenge the Board's Decision, the Applicant ought to have clearly and precisely identified the grounds relied upon in the Form 86 and in her supporting affirmation.³ As matter stands, the Applicant only included the ground that the Board Decision has been reached unfairly without allowing her an opportunity to clarify her case and situation in her country.

6. I have scrutinized the Board's Decision and come to the view that the purported ground identified by the Applicant cannot be established or considered as valid or effective public law ground.

7. First, the ground merely consists of general assertions without particulars. The same cannot assist the Applicant.⁴

8. In particular, I do not agree that the Applicant was not given an opportunity to clarify her case. She attended the oral hearing before the Board and confirmed the accuracy and truthfulness of the documents submitted by her. The Board also clarified certain matters with her. The Board was acutely aware of her claim that if refouled, her creditor i.e. Tran and his men would harm and kill her because she could not repay the loan.

9. Second, the Board had assessed the material facts and evidence of the Applicant's claim including the COI materials. The Board was entitled to find that (1) the threat to harm or kill the Applicant was just an empty threat to pressurize her to repay the loan; (2) her injuries were not serious at all and there was no and no risk of ill-treatment which could attain a minimum of severity; (3) she should have no difficulty to relocate within Vietnam and (4) the Vietnamese

¹

https://legalref.judiciary.hk/doc/judg/html/vetted/other/en/2022/HCAL000209_2022_files/the_Board's_Decision.pdf

² *Re Zunariyah* [2018] HKCA 14 at [23]; *Nupur Mst v. Director of Immigration* [2018] HKCA 524 at [14].

³ *Ho Loy & Anor v. Director of Environment Protection*, HCAL 21/2015 (Unrep.) 22.12.2016 at [142]

⁴ *Haider Khalil* [2021] HKCA 223 at [16].

government has recently undergone reforms to combat corruption amongst police and to improve their efficiency.

10. Third, in all circumstances, I can discern no error of law or procedural unfairness or irrationality on the part of the Board in the assessment and rejection of the Applicant's claim. The Board was entitled to come to the conclusions it did and reject her claim.

Conclusion

11. Accordingly, I am not satisfied that the Applicant's intended application for judicial review of the Board's Decision is reasonably arguable with any realistic prospects of success.⁵ I dismiss the Application.

Dated the 27th day of March 2026



(Klein Tse)
for Registrar, High Court

⁵ *Peter Po Fun Chan v. Winnie Cheung & Anor* (2007) 10 HKCFAR 676.

Where leave to apply has been granted, Applicants and their legal advisers are reminded of their obligation to reconsider the merits of their application in the light of the Respondent's evidence

Notes for the Applicant:

If leave has been granted, the Applicant or his solicitors must:

- a) serve on the respondent and such interested parties as may be directed by the Court the order granting leave and any directions given within 14 days after the leave was granted (Order 53, rule 4A);
- b) issue the originating summons within 14 days after the grant of leave and serve it in accordance with Order 53, rule 5; and
- c) supply to every other party copies of every affidavit which the Applicant proposes to use at the hearing, including the affidavit in support of the application for leave (Order 53, rule 6(5)).

Sent to the Applicant on 27 March 2026

Nguyen Thi Xoa

Applicant's ref. no:
Nil.

Sent to the Putative Respondent / the Putative Respondent's solicitors / such Putative Interested Parties as may be directed by the Court / the Putative Interested Parties' solicitors on 27 March 2026

Torture Claims Appeal Board / Non-Refoulement Claims Petition Office

Putative Respondent's ref. no.:
USM 10986/21/11/6/V3169

Director of Immigration
Putative Interested Party's ref. no.:
QA T/C 1196/21 (formerly RBCZ 10550/21)

**Department of Justice,
Senior Assistant Law Officer
(Civil Law)
(Civil Litigation Unit 2)**

No. 86
Notice of application for leave to apply for judicial
(O. 53 r. 3(2))



(Folio 1)

HCAL 209/2022

HCAL _____

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CONSTITUTIONAL AND ADMINISTRATIVE LAW LIST
NO. _____ OF 20 _____

High Court Accounts Office
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14/04/2022 09:50 AM
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CSH 1,045.00
Fees Paid 1,045.00

DHCJ Bruno Chan

14 APR 2022

NGUYEN THI XOA

Applicant

Notice of application for leave to apply
for judicial review
(O. 53 r. 3(2))

This form must be read together with notes for guidance obtainable from the Registry.

To the Registrar, High Court, Hong Kong.

Name, description and address of applicant	NGUYEN THI XOA Room B, 16/F, Lakeshore Building, 7 Tseng Choi street, Tuen Mun
Name and description of proposed respondent	Torture Claims Appeal Board / Non- refoulement Claims Petition Office Director of Immigration
Judgment, order, decision or other proceeding in respect of which relief is sought	The Decision dated 25 March 2022 from Torture Claims Appeal Board / Non- refoulement Claims Petition Office

Relief Sought

Name, description and address of all interested parties, (if any) known to the applicant	
Name and address of applicant's solicitors, or, if no solicitors acting, the address for service of the applicant	NGUYEN THI XOA Room B, 16/F, Lakeshore Building, 7 Tseng Choi street, Tuen Mun
Signed	Xoa
Dated	14 April 2022

Grounds on which relief is sought
(If there has been any delay, include reasons here).





(Folio 2)

HCAL 209/2022

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
ACTION / MISCELLANEOUS PROCEEDINGS / BANKRUPTCY
NO. _____ OF 20 ____**

BETWEEN

NGUYEN THI XOA

Applicant

And

**TORTURE CLAIMS APPEAL BOARD /
NON-REFOULEMENT CLAIMS PETITION OFFICE**

Putative
Respondent

DIRECTOR OF IMMIGRATION

Putative
Interested Party

AFFIRMATION OF NGUYEN THI XOA

I, NGUYEN THI XOA of Room B, 16/F, Lakeshore Building, 7 Tseng Choi street,
Tuen Mun,
solemnly and sincerely affirm as follows:

1. To Judicial Review against the Decision dated 25 March 2022 from Torture Claims Appeal Board / Non-refoulement Claims Petition Office.
2. The Decision has been reached unfairly without allowing me an opportunity to clarify my case and situation in my country.
3. I will be faced risk of being killed or tortured by my creditor if I return to Vietnam. Because the creditors and gangsters in Vietnam are different from those in Hong Kong, most of them are cruel and violent. They disregard the law and are willing to kill people to satisfy their anger and ferocity.
4. Because I and the creditor have not yet agreed on a repayment plan, if I am forced to repatriate my life will be in danger.
5. I also cannot relocate as Torture Claims Appeal Board / Non-refoulement Claims Petition Office and Director of Immigration suggested, because it will be difficult for me to change my living environment and find a job to support myself in another location in Vietnam. Furthermore, in the locality where I may be moving, I may face many obstacles that make it impossible for me to adapt to life there.
6. If I will relocate, no one can be sure that the creditor can not find me. And if I will be found, I will be very worried for my safety.
7. I sincerely request the Court of First Instance grant my application for leave to apply for judicial review.

8. Attached: Exhibit A (11 pages)

I make this affirmation in support of Notice of application for leave to apply for judicial review filed on this 14th day of April 2022. The facts deposed to herein are true to the best of my knowledge, information and belief save where otherwise stated.

And I solemnly and sincerely affirm that the contents of this affirmation are true.

Xca.

(signature of affirmant)

Affirmed at the Courts of Justice, HKSAR on this 14th day of April 2022 through the interpretation of Nguyen Thi Mai Loan of Room B, 5/F, No.4 Pang Ching Street, To Kwa Wan, Kowloon the said interpreter having been also first declared that she had truly, distinctly, and audibly interpreted the contents of this document to the affirmant and that she would truly and faithfully interpret the affirmation about to be administered to Nguyen Thi Xoa.

Before me


YUEN PO-ling, Ann
Commissioner for Oaths

Judiciary

I, Nguyen Thi Mai Loan of Room B, 5/F, No.4 Pang Ching Street, To Kwa Wan, Kowloon solemnly and sincerely declare that I well understand the official language in which this document is written and Vietnamese language and that I have truly, distinctly, and audibly interpreted the contents of this document to the affirmant Nguyen Thi Xoa, and that I will truly and faithfully interpret the affirmation about to be administered to her.



(signature of interpreter)

DECLARED at the Courts of Justice in the HKSAR this 14th day of April 2022.

Before me,



YUEN PO-TH, Ann

Commissioner for Oaths

Judiciary

Reference No.: USM 19086/21/11/6/V3169

Torture Claims Appeal Board/
Non-refoulement Claims Petition Office

Determination of Appeal/Petition With a Hearing

Appellant/Petitioner: Ms NGUYEN THI XOA

Representation: The Appellant/Petitioner:
In person


For the Director of Immigration:
Attendance has been excused

Date of Hearing: 28 January 2022

Heard at: Hearing Room B, 22/F
Two Chinachem Exchange Square
338 King's Road, North Point, Hong Kong

This is the exhibit marked "A (11 pages)"
referred to in the Affidavit / Affirmation of
Nguyen Thi Xoa
sworn/affirmed on this 14 day of April 2022

Before me,


YUEN Po-lin, Ann
Commissioner for Oaths
JUDICIARY

Decision

Background

1. The Appellant/Petitioner ("the Appellant") was born in Xa Ngu Lao, Huyen Thuy Nguyen, Haiphong, Vietnam. She is now aged 35.
2. The Appellant left Vietnam on 1 November 2020 for Dongxing of China and sneaked into Hong Kong via Shenzhen of China on 3 November 2020. She was arrested by the Police of Hong Kong on 23 November 2020.
3. On 15 December 2020, by a written representation, the Appellant lodged a claim for non-refoulement protection on all applicable grounds under the Unified Screening Mechanism ("USM") which included:

- (i) risk of torture under Part VIIC of the Immigration Ordinance, Cap.115 (“Torture Risk”);
 - (ii) risk of torture or cruel, inhuman or degrading treatment or punishment (“CIDTP”) under Article 3 of section 8 of the Hong Kong Bill of Rights Ordinance, Cap. 383 (“BOR 3”) (“BOR 3 Risk”);
 - (iii) risk of violation of right to life under Article 2 of section 8 of the Hong Kong Bill of Rights Ordinance, Cap. 383 (“BOR 2”) (“BOR 2 Risk”); and
 - (iv) risk of persecution with reference to the non-refoulement principle under Article 33 of the 1951 Convention relating to the Status of Refugees (“RC”) (“Persecution Risk”).
4. The Appellant claims that her life would be in danger had she been sent back to Vietnam. She alleges that she owed Tran Van Toan (“Tran”) a loan which she couldn’t repay and Tran, and/or his men, threatened to harm and kill the Appellant.
5. By a Notice of Decision dated 27 October 2021, the Immigration Officer on behalf of the Director of Immigration, rejected the Appellant’s non-refoulement claim on all applicable grounds including Torture Risk, BOR 3 Risk, BOR 2 Risk, and Persecution Risk. She filed an appeal/a petition (“the appeal”) against the decision on 1 November 2021.

The Law

(A) Torture Risk

6. Under Section 37U of the Immigration Ordinance, Cap. 115, “torture” is defined as:

“an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person –

(a) for such purposes as –

- (i) obtaining from that person or a third person information or a confession;*
- (ii) punishing that person for an act which that person or a third person has committed or is suspected of having committed; or*
- (iii) intimidating or coercing that person or a third person; or*

(b) for any reason based on discrimination of any kind,

when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in

an official capacity, excluding pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

7. This definition is similar to that set out in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”). In this appeal, the Appellant needs to establish that her removal to Vietnam would breach Article 3 of CAT.
8. Article 3(1) of CAT states: “*No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture*”. To succeed, the person needs to show there are substantial grounds for believing that he would be subjected to torture there.
9. The claim must go beyond mere theory or suspicion but does not have to meet the test of being highly probable. The danger must be personal and present.

(B) BOR 3 Risk

10. BOR 3 is the equivalent of Article 7 of International Covenant on Civil and Political Rights which reads: “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation*”.
11. The person who invokes the protection of risk of torture or CIDTP under BOR 3 must meet 2 main requirements, i.e. (a) the ill-treatment (physical and / or mental) he would face if expelled attains a minimum level of severity, and (b) he faces a genuine and substantial risk of being subjected to such ill-treatment. A very high threshold is required in order to establish each of these 2 requirements. It generally involves actual bodily injury or intense physical or mental suffering. (See: *Ubamaka v Secretary for Security* [2013] 2 HKC 75)

(C) BOR 2 Risk

12. The right to life of a person is protected under BOR 2.
13. BOR 2 is the equivalent of Article 6 of International Covenant on Civil and Political Rights which reads:

- (i) *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*
- (ii) *Sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of this Bill of Rights and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.*
- (iii) *When deprivation of life constitutes the crime of genocide, nothing in this article shall authorize the derogation in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*
- (iv) *Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*
- (v) *Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.*
- (vi) *Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment in Hong Kong.*

(D) Persecution Risk

14. A person should be considered as having a persecution risk for the purpose of his non-refoulement claim if:-
- (a) he, owing to well-founded fear of being persecuted on account of one or more of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country (Article 1A (2) of the RC); and
 - (b) his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion should he be expelled or returned to the frontiers of a Risk State.
15. The standard of proof is whether there is a reasonable possibility of such persecution risk.

The Appellant's Case

16. The Appellant was born in Xa Ngu Lao, Huyen Thuy Nguyen, Haiphong, Vietnam. She is now aged 35.
17. The Appellant had received 13 years of formal education. She completed her senior secondary school level. She had around 14 years of working experience. From 2006 to October 2020, she assisted her parents in selling of fruit. From 2017 to October 2020, she also ran her own business in marine products.
18. The Appellant has divorced. She has no children. Her parents are living in Vietnam and her younger brother and sister are living in Japan.
19. The Appellant married to Nguyen Van Hoa in 2019. They didn't register their marriage. In November 2020, the Appellant came to Hong Kong alone. In May 2021, her husband called her and told her that he would not to separate with her. Since then, there is no further contact between them.
20. Around end of 2016, the Appellant saved a sum of money by assisting her parents in selling of fruit. Then, she decided to run her own business of marine products. However, she didn't have sufficient fund. So, she decided to borrow money from Tran.
21. The Appellant borrowed 300 million Vietnamese Dong ("VTD") from Tran. The Appellant agreed to pay a monthly interest of 10 million VTD. There was no deadline for the repayment of the principal. ("the Loan").
22. The Appellant didn't know much about the background of Tran except that Tran was a moneylender and she heard that Tran was triad related.
23. Starting from the beginning of 2017, the Appellant and her female friend, Nguyen Thi Le ("Nguyen") ran a business of marine products together. They bought fish from fishermen and resold them for a profit. They didn't hire any staff.
24. From the end of 2016 to the end of August 2018, the Appellant was able to repay Tran the monthly interest. However, starting from end of 2018, the Appellant's business turned poor. Starting from November 2018, the Appellant had difficulty repaying Tran the monthly interest. Her last repayment to Tran was at the end of 2019. Up to the present moment, on

top of the principal of 300 million VTD, she still owed Tran monthly interest of 100 million VTD.

25. Tran had called the Appellant at the end of November and December of 2018, chasing her for the repayment of the monthly interest. At that time, Tran was calm and he didn't threaten the Appellant at all.
26. One day in the beginning of January 2019, ie. around two months after the Appellant stopped repaying Tran the monthly interest, 5 to 6 unknown males stopped the Appellant on the street. They claimed that they were sent by Tran, and they threatened the Appellant that if she didn't repay the Loan in one week's time, they would kill her. Then they left.
27. One week later, feeling scare, the Appellant hid herself in an apartment in a mountain some 12 km from her home. During this week, Tran's followers went to look for the Appellant at her fish store. Her business partner, Nguyen, told them that she didn't know the whereabouts of the Appellant. Tran's followers threatened to beat up the Appellant if she didn't repay the Loan, then they left.
28. The Appellant returned home after staying the apartment for 3 days. Then it was one day at the end of January 2019 that Tran came to the Appellant's fish store and chased her for the repayment of the Loan. After knowing that the Appellant was unable to repay the Loan, Tran slapped the Appellant's face three times and punched her chest twice.
29. The Appellant's partner, Nguyen, and other customers asked Tran to stop the beating. Tran did stop but he threatened to beat her up if he saw her again if the Appellant still didn't repay the Loan. However, Tran didn't say when he would come to look for the Appellant again.
30. The Appellant suffered from a swollen face and pain at her chest. She didn't consult any doctor. Her swollen face recovered after 3 days. She didn't report the matter to the police.
31. It was in the beginning of February 2019 that Tran and his wife came to the Appellant's fish store again. The Appellant told Tran that she was unable to repay him the Loan. Tran and his wife then scolded the Appellant and they threatened to beat her up and even kill her if she didn't repay the Loan. At that time, there were some customers and friends of the Appellant there. The

- security guards of the fish market also came and asked Tran and his wife not to make a scene anymore. As a result, Tran and his wife left.
32. In order to avoid Tran, the Appellant didn't return to her fish store in the following two weeks. She only returned to her store in the beginning of March 2019.
 33. It was one day in April 2019 that Tran's men came to the Appellant's fish store. On this occasion, the Appellant repaid a sum of 20 million VTD to them. She borrowed this sum of money from her friend. They reminded the Appellant to keep repaying the monthly interest. Then, they left.
 34. From May to December 2019, the Appellant tried her best to repay the monthly interest. She was able to repay around 7 to 8 million VTD a month to Tran. However, up to the beginning of 2020, the Appellant was unable to repay any money further because the business was so poor because of the Covid pandemic and the keen competition of the market.
 35. In mid-January 2020, Tran and his men came to the Appellant's store. He told the Appellant that the next time he came, the Appellant had to repay the whole of the Loan to him, otherwise, he would beat her up and even kill her.
 36. Since then, Tran didn't come to the Appellant's store or her home again. Yet, he would call the Appellant from time to time, chasing her for the repayment of the Loan, and he kept threatening to beat her up and even kill her.
 37. As a result, the Appellant felt scare and in the beginning of October 2020, she decided to leave Vietnam.
 38. Eventually, the Appellant left Vietnam on 1 November 2020 for Dongxing of China and sneaked into Hong Kong via Shenzhen of China on 3 November 2020. She was arrested by the Police of Hong Kong on 23 November 2020.
 39. On 15 December 2020, by a written representation, the Appellant lodged a claim for non-refoulement protection.

The Hearing

40. An oral hearing was held on 28 January 2022 so as to let the Appellant to have a chance to supplement what she had stated in her claim.
41. At the hearing, the Appellant adopted all the information contained in the Hearing Bundle and confirmed that they were all true and correct and the Board also clarified certain matters with her.

The Issues

(A) Torture Risk

42. The Appellant claimed that had she been sent back to Vietnam, she would be harmed or killed by Tran, her creditor, and his men.
43. This is clearly a case of loan dispute between the Appellant and Tran.
44. According to the Appellant, it was at the end of 2016 she raised this Loan with Tran. Since end of 2018, she had difficulty to repay monthly interest to Tran and Tran started to chase after the Appellant for repayment of the Loan.
45. The first time the Appellant was threatened by Tran was in January 2019. Tran's men threatened to kill her if she didn't repay the Loan within a week.
46. The first time the Appellant was attacked by Tran was at the end of January 2019. On this occasion, Tran slapped the Appellant's face and punched her chest. Again, Tran threatened to beat the Appellant up if she didn't repay the Loan.
47. The next time Tran came to chase after the Appellant for the repayment of Loan was in the beginning of February 2019. Yet on this occasion, Tran only threatened to beat up or kill the Appellant when she was unable to repay Tran the Loan. Tran didn't attack the Appellant at all.
48. Then it was in April 2019 that Tran's men came and chased the Appellant for the repayment of the Loan. This time, the Appellant did repay a small part of the outstanding interest. She was reminded to repay Tran the money. There was no threat, nor any attack, on this occasion.

49. From May to December 2019, the Appellant was able to repay part of the outstanding monthly interest. However, starting from January 2020, the Appellant was unable to repay any further money to Tran. Again, Tran came to look for the Appellant, chased her for the repayment of the Loan, threatened to harm or kill her if she didn't repay the Loan any time soon.
50. Since January 2020, Tran, or his men, didn't come to look for the Appellant any more. Tran just kept calling the Appellant, repeating his threats to harm or kill the Appellant if she didn't repay him the Loan. Otherwise, Tran did nothing further.
51. It's therefore clear that Tran's threats to harm or kill the Appellant was just an empty threat. It was just a measure to pressurize her to repay the Loan without any intention to carry out the threats at all. Had Tran been serious about killing the Appellant he would have done so long before she left Vietnam in November 2020.
52. In fact, apart from slapping and punching the Appellant a few times at the end of January 2019, Tran had never attacked the Appellant at all.
53. Therefore, after considering all the evidence, it's clear that the treatment the Appellant received does not fall within the meaning of "torture" under section 37U (1) of the Immigration Ordinance.
54. The Appellant said that she hadn't thought of reporting the matter to police because the police were corrupt and wouldn't help unless bribed. It's true that according to the country of origin information of Vietnam, it suggests that corruption and inefficiency is common in all level of police force, on the other hand, it also reveals that the Vietnamese government has recently undergone reforms in order to combat corruption amongst police and to improve their efficiency.
55. Therefore, after considering carefully all the evidence, I find the Appellant has failed to establish that there are substantial grounds for believing that she would be subjected to torture if she be sent back to Vietnam. Her claim under this heading fails.

(B) BOR 3 Risk

56. For the same reason, I do not find that the Appellant would be subjected to the kind of ill-treatment contemplated in BOR 3, had she been sent back to Vietnam.
57. Ill-treatment must attain a minimum of severity if it is to fall within the scope of BOR 3. Evidence suggested that although she had been attacked on one occasion, her injuries were not serious at all.
58. Therefore, her claim under this heading also fails.

(C) BOR 2 Risk

59. After careful consideration of the Appellant's case, I find that there is nothing in her case that supports her claim under this heading. Her claim under this heading, therefore, fails.

(D) Persecution Risk

60. It is no doubt that the Appellant is a Vietnam national and is outside her country of nationality.
61. However, for the same reason as above, I find that her fear of ill-treatment does not fall within the definition of persecution in that it was purely a private loan dispute between citizens and was not on account of race, religion, nationality, membership of a particular social group or political opinion.
62. Her claim under this heading also fails.

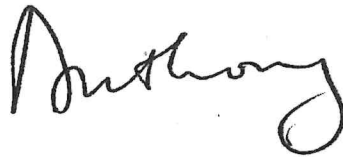
Internal Relocation

63. Vietnam is a large country covering an area of more than 330 thousand of kilometres. It also has a large population of over 92.7 million. Although Tran was believed to be triad related, there is no evidence suggesting that he was resourceful enough to locate the Appellant had she moved and stayed and in provinces or cities, such as Ho Chi Minh, Mong Cai, Da Nang or any city other than her home town.

64. The Appellant is a healthy young adult at the age of 35. She had received 13 years of formal education, and she had 14 years of working experience including running her own business. She should have no difficulty to live a normal life in a province or city other than her own in order to avoid her Tran and his men.

Conclusion

65. After considering carefully all the evidence, I find that the Appellant's claim fails on all applicable grounds. Her appeal is rejected and the decision of the Immigration Officer dated 27 October 2021 is confirmed.



(Anthony YUEN)
Member of the Torture Claims Appeal Board/
Adjudicator of the Non-Refoulement Claims Petition Office
25 March 2022