Case Summary for:
SARAH VICTOR V THE DIRECTOR OF IMMIGRATION[1]

Court:	Court of First Instance (Hong Kong) (the "**CFI**")
Judge:	Hon Chow J
Applicants (and Counsel):	Romail and Sarah Victor (acting in person)[2]
Putative Respondent (and Counsel):	The Director of Immigration (the "**Director**") (Ms Patricia Lam, Government Counsel, instructed by Department of Justice)
Date heard:	16 May 2018
Date promulgated:	23 May 2018
Full text:	https://www.hklii.hk/eng/hk/cases/hkcfi/2018/1108.html
ABSTRACT: The Applicants sought leave to apply for judicial review in relation to the decision(s) that they have failed to identify to be challenged. The CFI directed the notice of applications for judicial review be given to the Director to assist the court. The CFI dismissed the applications on the ground that they were not reasonably arguable.	
Key words:	Judicial review; leave to apply for judicial review

The Justice Centre is grateful for the assistance rendered by Morrison & Foerster LLP on this case summary.

[1] [2018] HKCU 1684;,HCAL 608/2018, HCAL 621/2018, [2018] HKCFI 1108.

[2] The Applicant in HCAL 621 of 2018 ("**Romail**") and the Applicant in HCAL 608/2018 ("**Sarah**") are husband and wife. The full name of Romail was not disclosed.

SUMMARY:

Facts and Procedural History:

The Applicants, Sarah and Romail, both Pakistani nationals, were husband and wife. Sarah was a Hong Kong permanent resident while Romail illegally entered Hong Kong on 11 February 2009. He was arrested on 4 August 2009 and subsequently lodged a torture claim under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 7 August 2009, which was treated as a non-refoulment claim by the Director under all applicable grounds, including risk of torture, risk of cruel, inhuman or degrading treatment or punishment, risk of persecution with reference to the non-refoulement principle under Article 33 of the 1951 Convention relating to the Status of Refugees, and risk to life. The Director rejected the non-refoulment claim on 22 July 2015 and 7 November 2016, and his appeal was rejected by the Torture Claims Appeal Board (the "**Board**") on 5 May 2017. A removal order was issued against Romail on 29 May 2017. On the same day, Romail applied for leave to apply for judicial review of the Board's decision. On 22 June 2017, Romail was served a Notice of Removal Order and Right of Appeal, pursuant to which he was informed that he could appeal against the Removal Order to the Immigration Tribunal. The application for leave to apply for judicial review was dismissed on 24 November 2017, and the appeal against the decision was dismissed by the Court of Appeal on 27 March 2018. On 16 January 2018, Romail and Sarah were married in Hong Kong. On or about 23 March 2018, Romail made an application for a dependent visa with Sarah as his sponsor (the "**DV Application**"). On 6 April 2018, Romail was detained in Castle Peak Bay Immigration Centre ("**CIC**") pending his removal from Hong Kong upon the end of his recognizance.

On 6 April 2018 and 7 April 2018, Romail and Sarah filed a Form 86 (Notice of application for leave to apply for judicial review), respectively. Both Forms 86 failed to identify the decision or nature of the decision sought to be challenged. The CFI directed the notice of applications for judicial review be given to the Director to assist the court whether to grant leave to apply for judicial review.

Issues:

Whether the Applicants' cases were arguable.

Judgment:

The applications were not reasonably arguable and were therefore dismissed.

Reasons for Judgment:

The judge dismissed the applications for reasons given at the hearing on 16 May 2018. The CFI found Romail's application, which purported to challenge the DV Application, pre-mature and/or misconceived as the DV Application was still under the consideration of the Director. The same conclusion has been reached in relation to Sarah's application. (para 22)

Romail and Sarah raised several complaints against the Director during the hearing on 16 May 2018, all of which were dismissed.

Of relevance were as follows: first, it was alleged that Romail was denied visits by Sarah and a friend at CIC, but it was noted that Romail had been diagnosed by the in-centre Medical Officer at CIC to be physically unfit for social visit on those days, and after his condition improved, Sarah was able to visit Romail. This was found to be irrelevant to the question of whether leave for judicial review should be granted.

Second, it was alleged that Romail was not explained his right of appeal against the Removal Order to the Immigration Tribunal. However, the documents signed by him appeared to show the contrary; and in any event, he suffered no prejudice by not appealing against the Removal Order as no grounds of appeal against a removal order could possibly be applicable to him.

Thirdly, it was argued that Romail should not have been detained in CIC pending the Director's consideration of the DV application he lodged, with his wife Sarah as his sponsor. It was held that the principles governing whether a person may be detained pending removal under section 32 of the Immigration Ordinance, Cap. 115 (the "**IO**"), were well-established. A review of Romail's detention was carried out on 2 May 2018 and no valid ground had been raised to prove that the detention was, or had become, unlawful. (paras 23 to 26)

The adjournment of the applications was also denied as the outcome of the DV Application had no impact on the outcome of the applications, and the physical presence of Romail was not required for the Director's consideration of the DV Application. (para 28)

Legal Provisions considered:

1. Sections 2AAA, 32, 53A(1) and 53A(2) of the IO
   https://www.hklii.hk/eng/hk/legis/ord/115/