

立法會
Legislative Council

LC Paper No. CB(2)2318/08-09
(These minutes have been seen
by the Administration)

Ref : CB2/BC/8/08

**Bills Committee on
Immigration (Amendment) Bill 2009**

**Minutes of meeting
on Wednesday, 8 July 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon LI Fung-ying, BBS, JP
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun

Public Officers attending : Security Bureau

Mr NGAI Wing-chit
Deputy Secretary for Security (3)

Mr W H CHOW
Principal Assistant Secretary for Security (D)

Mr Edward YU
Assistant Secretary for Security (D3)

Immigration Department

Mr David CHIU
Deputy Director of Immigration

Department of Justice

Mr Allen LAI
Senior Government Counsel

Clerk in attendance : Ms Betty FONG
Chief Council Secretary (2)2

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Miss Josephine SO
Senior Council Secretary (2)1

Ms Anna CHEUNG
Legislative Assistant (2)2

Action

I. Election of Chairman

Ms Miriam LAU was elected Chairman of the Bills Committee.

II. Meeting with the Administration

LC Paper No. CB(3)718/08-09 -- The Bill

File Ref : -- The Legislative Council Brief
SBCR 1/2091/08 issued by the Security Bureau
on 17 June 2009

LC Paper No. LS92/08-09 -- Legal Service Division Report
on the Bill

LC Paper No. CB(2)2116/08-09(01) -- Members' brief

LC Paper No. CB(2)2116/08-09(02) -- Marked-up copy of the
relevant provisions of the
Immigration Ordinance to be
amended by the Bill

Action

LC Paper No. CB(2)2116/08-09(03) -- Background brief prepared by
the Legislative Council
Secretariat

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Bills Committee requested the Administration to -
 - (a) explain why there was no specific offence against employees taking unlawful employment, while there was an offence against employers hiring illegal immigrants (IIs);
 - (b) provide information on how the Administration prosecuted IIs or overstayers found working illegally;
 - (c) provide the rationale for not adopting the option of making "prohibition from work" a condition in the grant of recognizance to IIs, or consider the possibility of implementing recognizance under a new statutory regime;
 - (d) provide information on humanitarian assistance currently provided for torture claimants, in particular the arrangements relating to the provision of food to torture claimants (including adults and children), and how their nutritional needs were met;
 - (e) provide information on overseas practices, e.g. the United States, Australia and Canada, in the handling of torture claimants in respect of detention of torture claimants and their right to work;
 - (f) explain the legal implications of the judgment of the Court of First Instance (CFI) in the judicial review case (*Iqbal Shahid, Waseem Abbas & Others v Secretary for Justice*);
 - (g) provide a sample of the printed slip or label to be issued in future to Macao permanent residents visiting Hong Kong, and explain the operation of the new arrangement;
 - (h) provide the numbers of IIs and any other ineligible persons arrested in the past few years for taking up employment in Hong Kong, with emphasis on those who sought refugee status or made torture claims only after they were arrested, together with a breakdown of such figures by type of work and by location of work;

Action

- (i) provide information on "economic refugees" and torture claimants in the nearby regions and the magnitude of the problem;
- (j) provide statistics on arrest and prosecution of IIs found taking up employment in Hong Kong, as well as employers found hiring persons who were not lawfully employable, before the handing down of the CFI's judgment in March 2009;
- (k) provide information on other sections of the Immigration Ordinance (IO) with similar provisions relating to the prohibition of taking employment and establishing business as proposed in the new section 38AA;
- (l) explain the correlation between the proposed 38AA(1)(a) and sections 13 and 36 of IO;
- (m) provide a legal analysis, together with the relevant case law, on whether a person coming to Hong Kong for the sole purpose of seeking asylum or making torture claim was landing "unlawfully", if he sought asylum or made torture claim immediately upon landing in Hong Kong; and
- (n) clarify whether the proposed definition of "establishing business" in proposed section 38AA covered self-employed persons and tallied with the definition of a similar expression in the Employment Ordinance (Cap. 57).

III. Date of next meeting

4. The Bills Committee agreed to tentatively schedule a meeting for Tuesday, 28 July 2009, at 4:30 pm. The Bills Committee also agreed to receive public views on the Bill at the next meeting.

(Post-meeting note: With the concurrence of the Chairman, the next meeting originally scheduled for 28 July 2009 was re-scheduled to Monday, 27 July 2009, from 4:30 pm to 6:30 pm. On the instruction of the Chairman, a notice to invite public views would be put on the website of the Legislative Council.)

5. The meeting ended at 10:38 am.

Council Business Division 2
Legislative Council Secretariat
30 July 2009

**Proceedings of the meeting of the
Bills Committee on Immigration (Amendment) Bill 2009
on Wednesday, 8 July 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000-000121	Dr Philip WONG Hon LAU Kong-wah Hon Miriam LAU	Election of Chairman	
000122-000730	Chairman Admin	<p>Chairman's Opening remarks</p> <p>Briefing by the Administration on the Immigration (Amendment) Bill 2009 (the Bill)</p> <p>Objects of the Bill -</p> <p>(a) to make new provisions and specify as an offence against the taking of employment or establishing/joining in business by illegal immigrants (IIs) and other ineligible persons; and</p> <p>(b) to amend the Immigration Ordinance (Cap. 115) (IO) to allow Macao permanent residents to visit Hong Kong solely on the strength of their Macao Permanent Identity Cards (PICs) by including a new category of documents under the definition of "valid travel document" (VTD)</p> <p>Background and impacts of a judicial review (JR) case (<i>Iqbal Shahid, Waseem Abbas & Others v SJ</i>) ruled in early March 2009 that recognizance granted to IIs represented an authority from the Director of Immigration for them to remain in Hong Kong (paragraphs 5 & 6 of the Legislative Council Brief (File Ref :SBCR 1/2091/08))</p> <p>The correlation between the Bill and the Administration's review of the torture claim screening mechanism; the Administration's plan to study the implementation of a legislative regime for handling torture claims made under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and to brief the Legislative Council (LegCo) on the legislative framework by the end of 2009</p>	
000731-001709	Dr Margaret NG Chairman Admin	Expressed disappointment with the Administration's reluctance to speed up its review of the torture claim screening mechanism and introduce more comprehensive legislative proposals to tackle all the issues, including the problem of employment of IIs, in one go; expressed grave concern over the Administration's hasty decision to make new	

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		<p>provisions under IO to specify an offence against the taking of employment by IIs; indicated that she had difficulty in supporting the Bill</p> <p>Briefing on the progress of the review on the torture claim screening mechanism undertaken by the Administration and the enhancement measures to be put in place. The Administration aimed to implement the enhanced screening procedures in September or October 2009. It also planned to introduce legislation on the screening procedures of torture claims, such that the procedures would be based on clear statutory provisions. The Panel on Security would be briefed and consulted on the relevant legislative proposals by the end of 2009</p> <p>Humanitarian assistance provided for torture claimants</p> <p>Whether the review of the torture claim screening mechanism fell within the scope of the Bill</p> <p>Explained that there had been an upsurge in the number of non-ethnic Chinese IIs intercepted in recent months after the handing down of the Court of First Instance (CFI)'s judgment in March 2009. There was an urgent need to specify an offence for the taking of employment or establishing/joining in business by IIs so as to prevent the problems of illegal immigration and illegal employment from deteriorating</p>	
001710-002558	Hon LI Fung-ying Admin	<p>Explained the established prosecution policy in respect of IIs or overstayers who took up illegal employment; advised that there was currently no offence against the taking of employment or establishing/joining in of business by IIs. The Administration had been prosecuting IIs and overstayers found taking employment in Hong Kong for the offences of "unlawful remaining" and "breach of conditions of stay" respectively under sections 38(1)(b) and 41 of IO. As the policy was recently challenged in the case of <i>Iqbal Shahid, Waseem Abbas & Others v Secretary for Justice</i>, IIs would have a defence against the charge of unlawful remaining</p> <p>Whether it was feasible to make "prohibition from work" a condition in a recognizance</p> <p>Explained that one of the purposes of a recognizance was to allow a person under a detention warrant be released before the proceedings for the removal or deportation of such person were completed. The recognizance did not give the person any additional legal</p>	

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		<p>rights such as the right to work in Hong Kong. In the situation where the person failed to comply with the terms/ conditions of recognizance, the recognizance should cease to have effect. The Administration had considered the implication of making "prohibition from work" a condition in a recognizance. Creating a new offence against the taking of employment or establishing/joining in of business by IIs was a more straightforward solution to address the problem of illegal employment</p>	
002559-003648	<p>Hon WONG Kwok-kin Chairman Admin Dr Margaret NG Hon LAU Kong-wah Hon Paul TSE</p>	<p>Expressed concern about the negative impact on the local employment market, when torture claimants receiving humanitarian assistance took up illegal employment in Hong Kong</p> <p>Administration's response -</p> <p>(a) as at June 2009, there were some 5 000 IIs who had made torture claims under CAT. 99.4% of these torture claimants were granted recognizance;</p> <p>(b) regarding the humanitarian assistance provided for torture claimants, the Administration had commissioned the International Social Service (ISS) Hong Kong Branch to provide assistance-in-kind services to some 3 500 torture claimants who were deprived of basic needs during their presence in Hong Kong. The type of assistance offered included temporary accommodation, food, other basic necessities and appropriate transport allowances. All applicants were required to go through ISS's assessment before humanitarian assistance was provided;</p> <p>(c) among the 700-odd torture claims processed by the Immigration Department, there was only one screened-in case; and</p> <p>(d) the Administration did not have statistics on torture claimants taking up illegal employment in Hong Kong</p> <p>The CFI's judgment on the JR case (<i>Iqbal Shahid, Waseem Abbas & Others v Secretary for Justice</i>) and its implications (paragraph 5 of the Legislative Council Brief (File Ref :SBCR 1/2091/08))</p>	
003649-004743	<p>Hon Emily LAU Chairman Admin</p>	<p>Suggested that the Bills Committee should meet with deputations and hear their views</p> <p>Shared Dr Margaret NG's view that the Administration should put in place an effective torture claim screening mechanism, with a view to ensuring procedural fairness and preventing abuse, before considering whether</p>	

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		<p>and how to prohibit torture claimants from taking employment; expressed difficulty in supporting the Bill</p> <p>Advised that -</p> <ul style="list-style-type: none"> (a) the Administration had a plan to enhance the torture claim screening mechanism; (b) the problem of IIs taking up illegal employment was a separate issue which needed to be addressed urgently; (c) a person being a torture claimant would not itself lead to that person's prosecution or detention in Hong Kong. Enforcement actions would be made only if the person concerned had breached the laws of Hong Kong, such as undertaking illegal employment or overstaying; (d) the Bill sought to create a new offence prohibiting IIs and persons who were subject to removal or deportation orders from taking employment, whether paid or unpaid, or establishing or joining in any business; (e) if the Bill was passed by LegCo, the Administration would be able to prosecute IIs and torture claimants who took up illegal employment in Hong Kong for committing the offence in the proposed new section 38AA <p>Provisions contained in Article 3 of CAT</p>	
004744-005607	Hon LAU Kong-wah Admin	<p>Expressed support for the Bill to plug the loophole for IIs to engage in employment; advised that the Administration had been requested to expedite its review of the torture claim screening mechanism and to report progress on the issue at the meeting of the Panel on Security scheduled to be held in September 2009</p> <p>How the limit and conditions of stay imposed on a Macao visitors would be issued in future, if the proposed immigration convenience measures were implemented; whether the new measures would be extended to visitors from other places</p> <p>Advised that at present, Macao Special Administrative Region (MSAR) permanent residents were required to produce Declaration Forms for Holders of MSAR Permanent Resident Identity Card to Hong Kong Special Administrative Region (HKSAR) (Declaration Forms) for visits to Hong Kong. They might print the Declaration Forms at self-service kiosks on the Macao side before their arrival in</p>	

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		<p>Hong Kong or at kiosks at the Macao Ferry Terminal and the China Ferry Terminal upon their arrival in Hong Kong. In the longer run, the Administration aimed to allow MSAR permanent residents to enter Hong Kong solely on the strength of their PICs. It planned to waive the requirement for Declaration Forms for Macao residents visiting Hong Kong. Technical amendments would be made to IO to allow the issuance of visas and conditions of stay on a printed slip or label. The Administration would take into account the operational experience and the overseas experience in considering whether or not to extend the proposed immigration convenience measures to people from other countries</p>	
005608-011308	<p>Hon James TO Chairman Admin</p>	<p>Pointed out that CFI had handed down a ruling concerning a JR case on the torture claim screening procedures and ruled that the procedures put in place by the Administration were unable to meet the high standards of fairness; stressed the need to put in place a comprehensive and effective mechanism for determining refugee status and assessing torture claims made under CAT in the first place before dealing with the problem of employment of IIs</p> <p>Whether the existing humanitarian assistance provided for torture claimants was adequate and measures taken by the Administration to prevent torture claimants from abusing the existing mechanism</p> <p>Reason(s) why there was no specific offence against employees taking unlawful employment, while there was an offence against employers hiring illegal immigrants (IIs); how the Administration prosecuted IIs or overstayers found working illegally; rationale for not adopting the option of making "prohibition from work" a condition in the grant of recognizance to IIs, and possibility of implementing recognizance under a new statutory regime</p>	<p>Admin to provide the requested information (paragraphs 3(a) - 3(c) of the minutes refer)</p>
011309-013100	<p>Hon Cyd HO Chairman Hon James TO Admin</p>	<p>Noted that members in general supported the proposal on immigration convenience measures for Macao visitors, but some members were concerned about the Administration's proposal to make new provisions under IO to specify an offence against the taking of employment by IIs; suggested that the Bill could be split into two bills in order to speed up the scrutiny process of the former</p> <p>Sought clarification as to whether there were other countries/places to which the proposed provisions in the Interpretation section might apply</p>	

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		<p>Arrangements relating to the provision of food to torture claimants (including adults and children) as part of the humanitarian assistance, and how their nutritional needs were met</p> <p>Expressed reservations about the suggestion of making "prohibition from work" a condition for persons granted recognizance for fear of possible abuse of power by enforcement officers; legal basis for granting recognizance as alternative to detention</p> <p>Explained the purpose of a recognizance granted under section 36 of IO and the stance of the Administration on making "prohibition from work" a condition in a recognizance. Creating a new offence against the taking of employment or establishing/joining in of business by IIs was considered a more straightforward solution to address the problem of illegal employment</p> <p>Recapitulated the background to the proposal to expand the scope of, and allow the issue of visa other than by endorsement on, VTDs to facilitate the entry of Macao permanent residents; advised that the proposed amendment would facilitate the implementation of similar convenience measures for visitors from other places/countries in the future</p>	<p>Admin to provide the requested information (paragraph 3(d) of the minutes refers)</p>
013101-013554	Hon Paul TSE Chairman Admin	<p>Overseas practices, e.g. the United States, Australia and Canada, in the handling of torture claimants in respect of detention of torture claimants and their right to work</p> <p>Reason(s) why there was no specific offence against employees taking unlawful employment, while there was an offence against employers hiring illegal immigrants (IIs)</p> <p>Legal implications of the CFI's judgment in the case of <i>Iqbal Shahid, Waseem Abbas & Others v Secretary for Justice</i></p> <p>The proposed penalty level of the new offence against IIs who took up unlawful employment (viz. a fine of \$50,000 and imprisonment for 3 years) versus that of the existing offence under section 17I of IO against employer of a person who was not lawfully employable (viz. a fine of \$350,000 and imprisonment for 3 years)</p>	<p>Admin to provide the requested information (paragraph 3(e) of the minutes refers)</p> <p>Admin to provide the requested information (paragraph 3(f) of the minutes refers)</p>
013555-013817	Hon WONG Kwok-kin Chairman	<p>Reiterated concern about the possible negative impact of IIs or torture claimants taking up illegal employment in Hong Kong; pointed out that the problem of illegal employment remained serious in the construction industry</p>	

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		Expressed support for the Bill and considered that there was an urgent need to specify an offence for the taking of employment or establishing/joining in business by IIs so as to prevent them from believing that there was any loophole to exploit, thus causing the problems of illegal immigration and illegal employment to deteriorate	
013818-014145	Hon LAU Kong-wah Chairman	Requested for - (a) a sample of the printed slip or label to be issued to Macao visitors in future, and information on the operation of the new arrangement; (b) numbers of IIs and any other ineligible persons arrested in the past few years for taking up employment in Hong Kong, with emphasis on those who sought refugee status or made torture claims only after they were arrested, together with a breakdown of such figures by type of work and by location of work; and (c) information on "economic refugees" and torture claimants in the nearby regions and the magnitude of the problem	Admin to provide the requested information (paragraphs 3(g) - 3(i) of the minutes refer)
014146-015156	Hon James TO Chairman Admin	Considered that the Administration should endeavour to identify the employer of the illegal employees to see if there was sufficient evidence to prosecute the employer in the first instance Sought information on - (a) statistics on arrest and prosecution of IIs found taking up employment in Hong Kong, as well as employers found hiring persons who were not lawfully employable, before the handing down of the CFI's judgment in March 2009; (b) information on other sections of IO with similar provisions relating to the prohibition of taking employment and establishing business as proposed in the new section 38AA; (c) the correlation between the proposed new section 38AA(1)(a) with sections 13 and 36 of IO; and (d) legal analysis on whether a person coming to Hong Kong for the sole purpose of seeking asylum or making torture claim was landing "unlawfully", if he sought asylum or made torture claim immediately upon landing in Hong Kong	Admin to provide the requested information (paragraphs 3(j) to 3(m) of the minutes refer)

Time marker	Speaker	Subject	Action required
015157-015412	Hon LI Fung-ying Chairman Admin	Whether the proposed definition of "establishing business" in proposed section 38AA covered self-employed persons and tallied with the definition of a similar expression in the Employment Ordinance (Cap. 57)	Admin to provide the requested information (paragraph 3(n) of the minutes refers)
015413-020727	Chairman Hon James TO Hon LAU Kong-wah Hon WONG Kwok-kin Hon LI Fung-ying	Pointed out that any person taking up unlawful employment should be prosecuted, irrespective of whether the person concerned was seeking refugee status or making torture claim; considered that the Administration's review of the torture claim screening mechanism was an issue outside the scope of the Bill, and should be followed up by the Panel on Security Date of the next meeting; plan to invite deputations to the next meeting; parties to be invited; the scope of the consultation	

Council Business Division 2
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30 July 2009