

立法會
Legislative Council

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by the Administration)

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Bills Committee on Immigration (Amendment) Bill 2011

Minutes of meeting
held on Friday, 2 March 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex

Members present : Hon LAU Kong-wah, JP (Chairman)
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon CHAN Hak-kan
Hon WONG Kwok-kin, BBS

Members absent : Dr Hon Margaret NG
Hon Cyd HO Sau-lan
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun, JP

Public Officers attending : Item I
Mr CHOW Wing-hang
Acting Deputy Secretary for Security 3

Ms Fanny IP
Senior Assistant Law Draftsman
Department of Justice

Mr Henry CHAN
Government Counsel
Department of Justice

Mr Billy WOO
Assistant Secretary for Security D1

Mr FUNG Ming-keung
Principal Immigration Officer (Torture Claim Assessment)
Immigration Department

Clerk in attendance : Mrs Sharon TONG
Principal Council Secretary (2)

Staff in attendance : Ms Connie FUNG
Senior Assistant Legal Adviser 1

Ms Rita LAI
Senior Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Administration was requested -

- (a) to provide the following information in respect of re-opening of torture claims -
 - (i) the number of withdrawn and re-opened cases on torture claims;
 - (ii) the categories of torture claims which were allowed to be re-opened; and
 - (iii) the number of cases where requests for re-opening the torture claims were rejected and the reasons for rejection;
- (b) to consider the suggestion of allowing claimants to appeal to the Torture Claims Appeal Board against the decisions of immigration officers not to re-open their claims under the proposed section 37ZG;

- (c) provide information on the mechanism for priority handling of the torture claims, including the categories of claims that would be given priority; the number of such priority cases, and the reasons, and the criteria for changing the priority order for processing the claims;
- (d) to consider setting out the criteria for deciding the priority order for processing torture claims in the internal guidelines;
- (e) to consider providing more resources to expedite the processing of torture claims;
- (f) to provide a written response to the suggestion of setting out in the Bill all other factors for determination of a torture claim;
- (g) to provide a written response to the suggestion of giving different considerations to claimants' absence from interviews with reasons and those without good reasons; and
- (h) to provide the following information in respect of detention of claimants -
 - (i) the existing provision in the Immigration Ordinance, regarding the power of the Director of Immigration ("D of Imm's) to detain persons pending removal or deportation and the related detention policy;
 - (ii) the policy on detaining torture claimants pending final determination;
 - (iii) the difference between D of Imm's power to detain persons under the existing provisions and the proposed section 37ZK; and
 - (iv) the number of torture claimants being detained and the reasons for detention.

II. Date of next meeting

3. Members noted that the next meeting had been scheduled for 12 March 2012 at 10:45 am.

4. The meeting ended at 10:25 am.

Council Business Division 2
Legislative Council Secretariat
7 June 2012

**Proceedings of meeting of the
Bills Committee on Immigration (Amendment) Bill 2011
held on Friday, 2 March 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000749	Chairman	Opening remarks	
000750 - 001114	Admin	Briefing on the proposed section 37ZC (Medical examination); and the Administration's response to views of deputations	
001115 - 001634	Admin	Briefing on the proposed section 37ZD (Credibility of claimant)	
001635 - 001926	Chairman Admin	Comments of The Law Society of Hong Kong and the Hong Kong Bar Association on the proposed section 37ZD and the Administration's response	
001927 - 002212	SALA1 Admin	Clarification on "reasonable excuse" in the proposed section 37ZD(2)(d), (e) and (f)	
002213 - 002908	Chairman Admin	Whether it was appropriate to set out a list of behaviours in the proposed section 37ZD(2), which was not exhaustive; Whether consideration would be given to including a list of the behaviours in the Immigration Department's internal guidelines; and Transparency of the list of behaviours; whether the list of behaviours would be made known to torture claimants	
002909 - 003405	Admin	Briefing on the proposed section 37ZE (Withdrawal of torture claim by claimant)	
003406 - 004215	Chairman Ms Emily LAU Admin	Whether an objective standard could be set for the meaning of "prospect of success of the claim" in the proposed section 37ZE(2)(a)(ii);	The Administration to provide information on - (a) the number of withdrawn and

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>Statistics on re-opened cases and the circumstances under which these cases were re-opened;</p> <p>Withdrawn cases not approved for re-opening and the reasons for rejection;</p> <p>Time gap between withdrawal of claims, repatriation and re-opening of claims; and</p> <p>Visa application for claimants to be repatriated if necessary</p>	<p>re-opened cases on torture claims;</p> <p>(b) the categories of torture claims which were allowed to be re-opened; and</p> <p>(c) the number of cases where requests for re-opening the torture claims were rejected and the reasons for rejection</p>
004216 - 004728	SALA1 Admin	<p>Whether the high standards of fairness as required by the court could be achieved if claimants could only resort to judicial review but not allowed to appeal against the decision of immigration officers in respect of rejecting applications for re-opening torture claims; and</p> <p>Prevention of possible abuse; and procedural decision of immigration officers not to be reviewed by the Torture Claims Appeal Board ("Appeal Board") but subject to judicial review</p>	
004729 - 005939	Ms Emily LAU Admin Chairman Mr WONG Yung-kan SALA1	<p>Appeal mechanism to be further enhanced; and whether more resources would be provided to ensure a better and fair appeal mechanism;</p> <p>Possible abuse by torture claimants in prolonging the process by allowing them to appeal to the Appeal Board against the procedural decisions of immigration officers;</p> <p>Provision of legal assistance to torture claimants;</p> <p>Possible challenges to the proposed section 37ZE(2)(b); and whether it was necessary to retain the proposed section; and</p>	The Administration to consider the suggestion of allowing claimants to appeal to the Appeal Board against the decisions of immigration officers not to re-open torture claims

Time marker	Speaker(s)	Subject(s)	Action Required
		Decision of immigration officers not to re-open torture claims was subject to judicial review	
005940 - 010038	Admin	Briefing on the proposed section 37ZF (Deemed withdrawal of torture claim on claimant's departure)	
010039 - 010953	Mr WONG Yung-kan Ms Emily LAU Chairman Admin	<p>Where a person left Hong Kong for special reasons and returned to Hong Kong and requested re-opening his torture claim, whether this would be regarded as "special circumstances" for the purpose of the proposed section 37ZE(2)(b);</p> <p>Handling of cases where claimants departed Hong Kong but re-entered the territory illegally and requested re-opening their torture claims; and</p> <p>Handling of cases where claimants raised their torture claims after leaving Hong Kong but had re-entered the territory due to changes in their places of origin</p>	
010954 - 011337	Admin	Briefing on the proposed section 37ZG (Deemed withdrawal of torture claim on failure to return completed torture claim form)	
011338 - 011642	Ms Emily LAU Chairman Admin	Enquiry about response of the Administration to the suggestion of extending the time limit of 28 days for return of completed torture claim forms as required under the proposed section 37Y(2) and undertaking by the Administration to provide a written response to the suggestion	
011643 - 011741	SALA1 Ms Emily LAU Chairman	Whether claimants would be allowed to appeal against the decision of immigration officers not to re-open their claims under the proposed section 37ZG	The Administration to consider the suggestion of allowing claimants to appeal against the decisions of immigration officers not to re-open their claims under the proposed section 37ZG

Time marker	Speaker(s)	Subject(s)	Action Required
011742 - 011859	Admin	Briefing on the proposed section 37ZH (Order in which claims are processed)	
011900 - 013637	Ms Emily LAU Admin Chairman	<p>Criteria on the basis of which the Director of Immigration ("D of Imm") decided the order in which torture claims were to be processed and whether the criteria were included in the internal guidelines;</p> <p>Giving priority to certain claimants, including those being detained, minors and their families, those with evidence of injury which might disappear over time and claimants whose cases could be determined within a short period of time;</p> <p>Comments of The Law Society of Hong Kong and the Hong Kong Bar Association on the proposed section 37ZH; and</p> <p>Provision of more resources to expedite the processing of torture claims</p>	<p>The Administration to -</p> <p>(a) provide information on the mechanism for priority handling of the torture claims, including the categories of claims that would be given priority; the number of such priority cases, and the reasons, and the criteria for changing the priority order for processing the claims;</p> <p>(b) consider setting out the criteria for deciding the priority order for processing torture claims in the internal guidelines; and</p> <p>(c) consider providing more resources to expedite the processing of torture claims</p>
013638 - 013859	Admin	Briefing on the proposed section 37ZI (Decision on torture claim)	
013900 - 014334	Ms Emily LAU Admin Chairman	<p>Whether consideration would be given to setting out in the Bill all other factors for the determination of a torture claim; and</p> <p>Giving different considerations to claimants' absence from interview with reasons and those without good reasons</p>	<p>The Administration to provide a written response to the suggestions of -</p> <p>(a) setting out in the Bill all other factors for determination of a torture claim; and</p> <p>(b) giving different considerations to claimants' absence from interviews with reasons and those without good reasons</p>

Time marker	Speaker(s)	Subject(s)	Action Required
014335 - 014414	Admin Ms Emily LAU Chairman	Briefing on the proposed section 37ZJ (Immigration officer to notify decision on torture claim)	
014415 - 014505	Admin	Briefing on the proposed section 37ZK (Detention pending final determination)	
014506 - 015502	Ms Emily LAU Admin SALA1 Chairman	Reasons for detaining torture claimants pending final determination; Whether the reasons for detention of torture claimants could be set out in the Bill or reference could be made to the Immigration Ordinance (Cap. 115) ("IO"); and Relevant provisions in IO regarding D of Imm's power to detain persons pending removal or deportation and related detention policy	The Administration to provide the following information - (a) the existing provisions in IO, regarding D of Imm's power to detain persons pending removal or deportation and the related detention policy; (b) the policy on detaining torture claimants pending final determination; (c) the difference between D of Imm's power to detain persons under the existing provisions and the proposed section 37ZK; and (d) the number of torture claimants being detained and the reasons for detention
015503 - 015534	Chairman Ms Emily LAU	Closing remarks	