

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

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本函檔號 Our Ref.: SBCR 1/3221/12

來函檔號 Your Ref.: CB2/PL/SE

By Fax : 2185 7845

14 July 2014

Ms Betty Ma
Clerk to Panel on Security
Legislative Council
Legislative Council Complex
Central, Hong Kong

Dear Betty,

Implementation of the Unified Screening Mechanism

I refer to your letter of 4 June 2014 attaching written questions raised by Hon Dennis Kwok in his letter dated 3 June 2014 to the Chairman of the Panel on Security.

2. To implement the Court of Final Appeal (CFA)'s two rulings in December 2012 and March 2013, the Administration announced on 7 February 2014 (the Announcement) that a unified screening mechanism (USM) will commence operating on 3 March 2014 for determining non-refoulement claims lodged by persons not having the right to enter and remain in Hong Kong against removal or deportation to another country on applicable grounds including risks of, apart from torture under Part VIIC of the Immigration Ordinance (Cap. 115) (the Ordinance), (i) 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) and (ii) persecution with reference to the non-refoulement principle under Article 33 of the 1951 Convention relating to the Status of Refugees (the Refugee Convention) in one go. Procedures of the USM follow those of the statutory torture claim screening mechanism under Part VIIC of the Ordinance, which were enacted following extensive consultation with relevant stakeholders and close scrutiny by the Legislative Council, to ensure that they meet with the high standards of fairness required by law.

Announcement and communication with claimants and other stakeholders

3. In tandem with the Announcement, the Immigration Department (ImmD) has taken a series of measures to ensure that all relevant stakeholders are fully informed of the commencement of the USM and the procedures thereunder, including –

(a) informing, prior to the Announcement, all departments and organizations that are involved in the screening process or providing assistance to claimants, including the Duty Lawyer Service (DLS), the Department of Health, the Hospital Authority, the Social Welfare Department (SWD), the Education Bureau, and the International Social Service - Hong Kong (ISS) of the commencement of the USM. The United Nations High Commissioner for Refugees (UNHCR), which has decided to cease asylum screening in Hong Kong after the Administration has announced in July 2013 its plan to implement the USM, was also informed at the same time. Immediately following the Announcement, the UNHCR has informed all asylum seekers of its decision to cease asylum screening;

(b) issuing a notification letter, in the week following the Announcement, to each and every outstanding torture / non-refoulement claimant through the DLS to inform them of the commencement of the USM, the website containing the “Notice to Persons Making a Non-refoulement Claim” (the Notice)¹ which they can refer to for detailed information on the procedures of the USM, the corresponding transitional arrangements applicable depending on the stage of screening of their claims, and a contact number of the ImmD for enquiry. The claimants have also been reminded to seek advice from their duty lawyer or legal representative as necessary;

(c) uploading, immediately following the Announcement, the Notice to the ImmD’s departmental website for public access. Subsequently the “Non-Refoulement Claim Form”² and a flowchart³ of the USM have also been uploaded to the website to facilitate a better understanding on the procedural flow of the USM. Further, copies of the Notice and the flowchart, in 15 languages other than English and Chinese, including Ilocano, Nepali, French, Cebuano, Tagalog, Sinhala, Thai, Somali, Vietnamese, Tamil, Bengali, Indian Punjabi, Hindi, Urdu and

¹ http://www.immd.gov.hk/pdf/notice_non-refoulement_claim_en.pdf

² <http://www.immd.gov.hk/pdf/forms/id978e.pdf>

³ <http://www.immd.gov.hk/pdf/forms/id978e.pdf>

Indonesian, have now been made available at both the Recognizance (Reporting) Office of the ImmD at Ma Tau Kok and the Castle Peak Bay Immigration Centre.

4. The concern regarding how to “file a claim” is misplaced. There is no formal application which a person must submit to “file a claim”. As a matter of established practice, when arranging for the removal of a person subject or liable to be removed, the ImmD provides an opportunity for him to make representations (if any) against their removal. Upon receiving a person’s representation (or any other written submission by the person at any time), the ImmD will assess whether the written signification gives a general indication of the person’s reason for seeking non-refoulement protection being reasons that relate to torture, CIDTP, and/or persecution (as opposed to, say, a person resisting removal on the basis that he has the right of abode in Hong Kong, or that he wishes to remain in Hong Kong for employment or other reasons not related to seeking non-refoulement protection). If so, his claim will be screened under the USM. If the written signification is written in languages other than English or Chinese, the ImmD will make arrangement for translation as appropriate. If a person who is illiterate or otherwise unable to give such written signification due to his personal circumstances requests assistance in making a submission, an immigration officer, assisted by an interpreter where appropriate, may arrange for an interview and take a statement signed or attested by that person or provide any such assistance as may be reasonably required in the circumstances.

Claimants with special needs

5. In setting out the priority of claims to be screened, the ImmD will take into account a number of factors including whether the claimant is under detention, whether the claimant may constitute a threat to safety or security of the general public, whether the claimant is vulnerable or has any special needs (e.g. unaccompanied minor or persons who had been subjected to violent abuses, etc.), and how long has the claim been lodged, etc.

6. At the time when a person’s non-refoulement claim is considered made, the ImmD will issue an acknowledgement letter to the claimant, which, *inter alia*, reminds the claimant that he may approach the ImmD if he has any special needs. The ImmD’s case officers have received comprehensive training on handling special cases, including the guidelines under the Istanbul Protocol for assessing such cases, and

interviewing techniques with vulnerable claimants, e.g., unaccompanied minor and victims of sexual violence.

Presence of claimants in Hong Kong

7. In February 2014, the CFA affirmed in *GA & Ors v Director of Immigration (FACV 7 – 10/2013)* that none of the Basic Law, the Hong Kong Bill of Rights Ordinance (Cap.383) and the International Covenant on Economic, Social and Cultural Rights grants a constitutional or common law right to work to non-refoulement claimants in Hong Kong. Nonetheless, the Director of Immigration would continue to grant discretionary permission to substantiated claimants to work in exceptional cases.

8. Hong Kong is a unique place with a dense population, a long coastline, and a well-developed transportation network which makes it the hub for the region. In order not to let illegal immigrants and other issues affect the livelihood and employment of the people of Hong Kong, a firm immigration control policy must be maintained. A wrong message must not be sent to illegal immigrants that as long as they successfully enter Hong Kong and then make non-refoulement claims, they may be granted asylum to remain and/or permission to work in Hong Kong. Otherwise, there will be a significant risk of mass influx of illegal immigrants, which will greatly jeopardize our immigration control, public safety and social stability. The commencement of the USM does not affect our position that the Refugee Convention and its 1967 Protocol have never been applied to Hong Kong and our firm policy of not determining the refugee status of or granting asylum to anyone.

9. The USM is a mechanism for determining non-refoulement claims. Where a claim is substantiated on any of the applicable grounds including torture, CIDTP, and/or persecution, the ImmD will afford non-refoulement protection to the claimant by temporarily withholding his removal or deportation from Hong Kong to the putative risk country. The ImmD will regularly review the claim of all substantiated claimants still in Hong Kong. When the risk(s) giving rise to the claim ceases to exist due to changes in circumstances of the claimant or the risk country, the ImmD will consider in accordance with prevailing law and policy whether non-refoulement protection still needs to be availed to the claimant.

10. Although the UNHCR has decided to cease asylum screening after the Administration announced its plan to implement the USM, it

continues to provide protection to refugees in accordance with its mandate. In this connection, persons whose non-refoulement claim is substantiated under the USM on grounds of persecution risk will be referred to the UNHCR for recognition as refugees and arrangement of resettlement of them to a third country.

11. On humanitarian grounds, non-refoulement claimants and mandate refugees who are deprived of basic needs during their presence in Hong Kong may approach the SWD which, in collaboration with the ISS, offers in-kind humanitarian assistance to them on a case-by-case basis to prevent them from becoming destitute. This assistance is not intended to cover visitors or other foreigners who are legally remaining in Hong Kong. As set out in the Administration's paper⁴ to the Panel on Welfare Services in January 2014, the assistance level and delivery arrangement have most recently been enhanced in February 2014, which includes an increase in rental allowance and food, provision of rental deposits and property agent fees, and enhancement in delivery arrangement of transportation and utilities allowances. The SWD will continue to closely monitor and review the programme and assistance level from time to time and make adjustments as necessary.

12. If you have any further enquiries, please contact the undersigned at 2810 2099.

Yours faithfully,



(Freddy Chik)
for Secretary for Security

c.c. Director of Immigration (Attn: Mr PH Fung)

⁴ <http://www.legco.gov.hk/yr13-14/english/panels/ws/papers/ws0113cb2-626-6-e.pdf>