

IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE  
INTENDED ACTION NO 9 OF 2012

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MITCHEL DWAYNE GROTCHE

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Applicant

Before: Hon Lam J in Chambers (Not Open to the Public)

Date of Hearing: 28 February 2012

Date of Judgment: 29 February 2012

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J U D G M E N T

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1. In the late afternoon of 28 February 2012, the Applicant asked for an appointment from the court to hear an urgent application by him. This court, being the judge in charge of the Constitutional and Administrative Law List as well as the duty judge this week, heard him accordingly in the evening of that date. Before the hearing, the Applicant submitted a set of papers in support of his application (which the court duly read).

2. The Applicant, a US citizen, arrived in Hong Kong on 5 February 2012. He flew in from Sydney with connecting flight to London. After his arrival in Hong Kong, he decided that he wanted to fly to Paris instead. The airline which he had booked air ticket for his flights could not, at a fee agreeable to him, arrange for him to fly to Paris instead of London. He was therefore (as perceived by him) “stranded” in Hong Kong. He was given permission by the Director of Immigration to land and enter into Hong Kong as a visitor. Due to his financial position, the Applicant told this court he had difficulties in providing for his own accommodation and meals.

3. Having found himself in such predicament, the Applicant applied for a variation of his status. As a

visitor, the Applicant is not allowed to take up any employment. He sent an email to various persons including the Chief Executive of the Government, the Secretary for Justice and the Immigration Department in which he contended that he was held in Hong Kong against his will by the denial of his right to travel out of Hong Kong and denial of “employment to obtain shelter and food”. He further said the way he was treated amounted to a violation of the Torture Convention. He argued that he should not be considered as a “visitor” under the Immigration Regulations Cap 115A. He asked to be permitted to work to support himself.

4. The Director of Immigration, through his staff, replied by email on 27 February 2012. After referring to the personal situation of the Applicant, the Director alluded to Regulation 2(1) of the Immigration Regulations regarding the conditions of stay in respect of a visitor. The Director informed the Applicant as follows,

“If you are not a person having the right of abode, right to land or unconditional status in Hong Kong, you need to apply for an employment visa under the General Employment Policy (GEP) before taking up any employment activities in Hong Kong.”

5. The Director then referred the Applicant to related information for an application for employment visa and set out the eligibility criteria in the email.

6. In the meantime, the Applicant wished to apply for judicial review in respect of his immigration status. He prepared a Form 86 in his own handwriting on 22 February 2012. In a nutshell, he contended that he should not be treated as a visitor in these circumstances.

7. In the usual course, application for leave to apply for judicial review can be filed without any hearing. But the Applicant did not (and does not) wish to pay any court fees and he applied before Master de Souza for waiver of court fees. The master refused to do so.

8. Thus, his papers cannot be filed in the usual manner. The Applicant then took the exceptional course of making an appointment for urgent application. As mentioned, this court heard him in the evening of 28 February 2012.

9. The Applicant contended that it is a denial of access to court if he could only lodge his application upon payment of court fees.

10. I cannot accept this submission. Our court fees are set at the very modest level of \$1,045.00 and there is a power to reduce, remit or defer payment in appropriate case. Under Rule 2(2) of the High

Court Fees Rules, the Registrar may exercise such power as he think fit having regard to the circumstances of the particular case. In the present case, the power was exercised by the master (who is authorized by Section 38(2) of the High Court Ordinance to exercise the power conferred on the Registrar) and I see no basis for suggesting that he had exercised his power wrongly.

11. The rules vested the power on the Registrar (and the masters), not a judge. I do not have any power to override this administrative decision of the master.

12. In any event, having considered the substantive merits of the Applicant's contentions, even if his application can be filed, the court would refuse leave to apply for judicial review. I do not see any basis for suggesting that he is a torture claimant under the Convention Against Torture. There is also no basis for his complaint that he was detained in Hong Kong. I was told by the Applicant that he had approached the American Consulate General and he was advised to return to his home country. Nobody stops him from following that sound advice. If he had financial difficulty in paying for his air ticket, I am sure that the American Consulate General would be willing to assist.

13. What the Applicant cannot do is to insist that he be given permission to work here without satisfying the Director's GEP policy. I see no ground for challenging the legality or rationality of the Director's decision to restrict his permission to remain in Hong Kong as a visitor.

14. It is also clear from what I have said above that the Applicant should not have made this application by way of urgent application. I see no reason why this judgment should not be published in the usual manner.

15. His *ex parte* application is refused accordingly.

(M H Lam)

Judge of the Court of First Instance  
High Court

The Applicant, in person, present