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Malaysian Bar

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To Members of the Malaysian Bar

Matters Discussed with the Immigration Department of Malaysia

The Bar Council Government Affairs Committee ("GAC"), together with the Bar Council Constitutional Law and Human Rights Committee and the Bar Council Migrants and Refugees Committee (collectively, the "Committees"), recently paid a courtesy visit to the Immigration Department of Malaysia. They met with YBhg Dato' Zakaria b Shaaban, Director General of Immigration, together with officers of the Immigration Department, namely Tuan Fabian Anak Philip, Deputy Director, Immigration Depot and Detention Management Division; Tuan Mohamad Zam Zami b Marzuki, Deputy Director, Enforcement Division; and Tuan Mazwan b Ab Manan, Deputy Director, Policy and Strategic Planning Division.

During the engagement, the Committees' representatives raised various matters concerning the administration of immigration laws and policies, including issues encountered by Members of the Bar in their dealings with the Immigration Department.

Among the matters discussed was the role of lawyers in dealing with the Immigration Department. The Director General emphasised the importance of maintaining professionalism and appropriate conduct when dealing with immigration officers. Members of the Bar are therefore reminded to communicate and engage with officers in a professional and courteous manner.

The Immigration Department further clarified that, in relation to administrative immigration matters, the applicant or relevant person is generally required to deal directly with the Department. Lawyers are not permitted to represent clients or write to the Immigration Department on their behalf in administrative matters where there is no investigation and/or prosecution by the Department. However, Members of the Bar may accompany and assist their clients when attending the Immigration Department, but are generally not permitted to act as third parties on behalf of applicants in administrative immigration matters.

In particular, the Immigration Department explained that representations or applications relating to matters such as compound appeals would generally need to be submitted by the relevant applicant or employer, as applicable. Members of the Bar may assist their clients in preparing or facilitating such matters and may accompany them to the Immigration Department where appropriate.

The position is different in matters concerning immigration detainees. The Immigration Department acknowledged that detainees have the right to appoint lawyers and that lawyers may make representations in matters relating to detention.

Members of the Bar are accordingly advised to take note of the above clarification when dealing with the Immigration Department and to ensure that the appropriate applicant or relevant person is involved directly where required by the Department.

The following issues were also raised by the Committees with the Immigration Department:

(1) **Objections to Bail for Bailable Offences under the Immigration Act 1959/63**

The issue of objections by Deputy Public Prosecutors ("DPPs") and Prosecuting Officers ("POs") to bail applications for bailable offences under the Immigration Act 1959/63 was discussed. The Committees will follow up on this matter with the Attorney General's Chambers ("AGC").

(2) **Prosecution of UNHCR Card Holders as Illegal Immigrants**

The Immigration Department assured the Committees that registered refugees holding valid United Nations High Commissioner for Refugees ("UNHCR") cards would not be prosecuted as illegal immigrants unless they failed to produce their cards. However, asylum seekers who have registered with UNHCR but are still awaiting the issuance of their cards remain at risk of being treated and prosecuted as illegal immigrants if apprehended before receiving their cards.

(3) **Documentation of Refugee Registration Programme**

GAC commended the commencement of the Documentation of Refugee Registration ("DPP") Programme as a step in the right direction. The Immigration Department informed the Committees that it was currently undertaking the registration of individuals in detention centres before proceeding with the registration of refugees living in the country. However, the Department indicated that the registration process would take time to complete due to a lack of manpower.

(4) **Access to Legal Representation for Immigration Detainees**

The issue of detainees being allowed to communicate with lawyers only after giving their statements was discussed. The Immigration Department assured the Committees that the process will be reviewed to facilitate access to legal representation at the earliest opportunity, provided that a Warrant to Act is produced.

(5) **Certificate of Identity for Stateless Persons**

The issue of overseas travel for "stateless persons" in the country was raised. The Immigration Department stated that eligible stateless persons may travel with a Certificate of Identity (Surat Akuan Pengenalan) issued by the Department subject to the applicable conditions of travel.

(6) **Passes for Foreign Spouses Following Divorce or Bereavement**

The Immigration Department clarified that a foreign spouse would no longer qualify for a Spouse Visa (Long-Term Social Visit Pass ("LTSVP")) once the divorce is finalised.

However, where the foreign spouse has full or joint custody of a child who is a Malaysian citizen, the Department may consider an application under the appropriate Resident Pass category, subject to the applicable requirements.

The Department further indicated that applications would be assessed on a case-by-case basis, particularly where shared custody arrangements exist. Mere visitation rights would not, in themselves, confer an entitlement to remain in Malaysia, although the foreign parent would generally not be prevented from visiting the child.

The Department further distinguished such cases from those involving a widow or widower of a Malaysian citizen, who may be considered for the relevant Widow / Widower Pass (LTSVP) or Resident Pass under specific categories, subject to the applicable requirements.

It was also emphasised that a Permit Masuk is not an automatic entitlement and that each application would be assessed based on its individual merits. Members of the Bar are advised to refer to the official website of the Immigration Department when advising foreign spouses who are divorced or widowed on applications for the relevant passes.

GAC will continue to engage with the Immigration Department on issues affecting Members of the Bar and seek further clarification on matters concerning immigration law, policy and administrative practice.

For enquiries, please contact Najwa Syazwani Aqilah bt Abd Hamid, Executive Officer (najwa@malaysianbar.org.my) or Pathmeshwary Sanmuganathan, Officer (pathmeshwary@malaysianbar.org.my).

Thank you.

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