



**Resolution Adopted at the 77th Annual General Meeting of the Malaysian Bar
(Held on 18 March 2023)**

Resolution to Set Time Limit for the Minister to Decide on Appeals and Related Matters

Whereas:

- (1) When there is **no time limit** stipulated in laws for decisions on appeals to the Minister, it creates great injustice. The right to judicial review cannot be exercised until the Minister makes and conveys his/her decision on an appeal. If a person is dissatisfied with the Minister's decision, then he/she can go to court for judicial review.
- (2) As an example, section 9(8) of the Immigration Act 1959/63 states (emphases added in bold):

(8) **Any person who is dissatisfied with any order** made against him under paragraph (1)(a), or the holder of any Pass or Permit cancelled under paragraph (1)(b) or (c) respectively, who is dissatisfied with the cancellation, or any person as is referred to under paragraph 6(a), (b) or (c) who is dissatisfied with the application of subsections (4) and (5) to him under subsection (6), **may appeal to the Minister** within seven days of the publication of the order in the *Gazette* under subsection (2), or the notification of the cancellation to the holder of the Pass or Permit under subsection (3), as the case may be, and such appeal shall be by way of a petition in writing setting out clearly and in detail the grounds of the appeal:

Provided that notwithstanding any appeal under this subsection, pending the determination of such appeal, the order of the Director General under paragraph (1)(a), or the cancellation of the Pass or Permit under paragraph (1)(b) or (c) respectively, or the application of subsections (4) and (5) to any person under subsection (6), shall have full force and effect as provided under subsection (2) or (3), as the case may be, and, where accordingly the person appealing is outside Malaysia, or has left Malaysia or been removed from Malaysia before its determination he may be permitted to enter or re-enter Malaysia if his appeal is allowed and the order under paragraph (1)(a) is revoked, or the Pass or Permit is restored to him, as the case may be.

- (3) Although the time for making the appeal is stipulated, there is **no provision as to the amount of time that the Minister has to decide on the appeal and convey his/her decision.**
- (4) On 19 April 2022, Sabri bin Umar, a migrant worker from Indonesia, was wrongly charged, convicted and sentenced to 11 months' imprisonment and five strokes of the whip for being illegally present in Malaysia, when he was in fact a properly documented migrant worker with a valid Visit Pass (Temporary Employment) ("PLKS"). On 23 June 2022, despite a pending appeal, Sabri bin Umar was wrongfully whipped five times.
- (5) When the High Court, or the High Court Judge at Tawau, became aware of the miscarriage of justice that had occurred, the High Court called up the plaintiff's case for revision on 22 July 2022, and released him.
- (6) To remain in Malaysia, Sabri bin Umar needed to apply and obtain a Special Pass for his quest for justice against all perpetrators, including the police, Deputy Public Prosecutors, Immigration Department of Malaysia ("Immigration Department"), and others. The Immigration Department, however, gave him a two-week Special Pass (not the usual 30-day Special Pass) on 28 July 2022 to make preparations to return to Indonesia.
- (7) Aggrieved with the Immigration Department's decision, he appealed to the Minister on 5 August 2022 in accordance with the law.
- (8) On 11 August 2022, on his next application for another Special Pass for his quest for justice, the Immigration Department again issued a two-week Special Pass for him to make preparations to return to Indonesia.
- (9) Aggrieved with the Immigration Department's decision, he again appealed to the Minister on 14 August 2022.
- (10) When the Minister failed to respond, he had no choice but to commence court action on or about 22 August 2022, primarily to get a court order that the Minister make and give his/her decision on the appeal. Without the Minister's decision on the appeal, one's right to go to court for judicial review cannot be exercised.
- (11) As of 10 March 2023, the Minister has yet to revert with a decision on the two appeals by Sabri bin Umar. There was not even a letter from the Minister acknowledging the receipt of the appeal and saying that the appeal will be considered soon, and the decision made. Even the new Minister of Home Affairs of the Pakatan Harapan-led Government has yet to respond.
- (12) The Minister's failure to consider and make a decision on the appeals brings about great injustice, more so for foreign nationals who may be forced to leave the country if the Minister delays the decision. Once out of Malaysia, things become very difficult as most avenues of justice are in Malaysia, and only Malaysia has jurisdiction.

- (13) For cases involving especially foreign nationals, there must be provisions in law that allow for them to stay in Malaysia until the Minister's decision on an appeal is made and conveyed to the appellant. The right to remain in Malaysia ought to be justly at least about 14 days after the receipt of the decision on the appeal, giving the appellant time to prepare and file for judicial review if the appellant so desires.
- (14) The Minister's delay may be because of negligence, or may be intentional. A delay will deter the person who appealed to the Minister. For a foreign national, especially the poor migrant worker, it can mean that he/she will be forced to leave Malaysia, and thus it becomes near impossible to even commence judicial review proceedings in the Malaysian courts.

Therefore, the Malaysian Bar resolves to:

- (A) Call on the Government of Malaysia to ensure that all laws clearly state the **time limit** for the Minister to consider and decide on appeals made to him/her;
- (B) Call on the Government of Malaysia to allow foreign nationals, including migrant workers, to remain in Malaysia pending the Minister's decision on an appeal, or preferably be allowed to stay in Malaysia for at least a further two weeks, being time for them to consider whether to file for judicial review; and
- (C) Call on the Government of Malaysia to ensure that access to justice be speedy and efficient.