

THE COURT OF FINAL APPEAL

Comilang, Milagros Tecson & Anor v Director of Immigration
Luis, Desiree Rante & Ors v Director of Immigration
FACV Nos. 9 & 10 of 2018

1st Appellant (FACV9/2018):	Milagros Tecson Comilang
2nd Appellant (FACV9/2018):	Zahrah Noor Ahmed, a minor, by her next friend and mother, 1st Appellant
1st Appellant (FACV10/2018):	Desiree Rante Luis
2nd Appellant (FACV10/2018):	David John Rante Luis, a minor, by his next friend and mother, 1st Appellant
3rd Appellant (FACV10/2018):	Carl Benz Rante Luis, a minor, by his next friend and mother, 1st Appellant
4th Appellant (FACV10/2018):	Mark Joelry Rante Luis, a minor, by his next friend and mother, 1st Appellant
Respondent (FACV9-10/2018):	Director of Immigration
Hearing Dates:	28 February & 1 March 2019
Judges:	Chief Justice Ma, Mr Justice Ribeiro PJ, Mr Justice Fok PJ, Mr Justice Stock NPJ and Mr Justice French NPJ
Counsel for the Appellants:	Gladys Li SC, Raza Husain QC and PY Lo
Counsel for the Respondent:	Lord Pannick QC, Abraham Chan SC and Grace Chow
Subject Matter:	Constitutional and Administrative Law

Facts: These appeals are brought by two families. The 1st appellants are foreign nationals with no right of abode and no right to enter or remain in Hong Kong. The other appellants, the 1st appellants' children, are all Hong Kong residents. The 1st appellants applied for extensions of permissions to remain in Hong Kong to take care of their respective minor children. The Director of Immigration ("**the Director**") refused their applications as they did not fall within any of the recognized categories under his immigration policy and there were no exceptional circumstances to justify extensions of stay based on humanitarian or compassionate grounds.

The appellants' judicial review against the Director's decisions were dismissed. The Judge held that no fundamental rights were engaged or violated in the Director's decisions. The Director's decisions were further not procedurally unfair, inadequate or reviewably unreasonable. The Court of Appeal ("**the CA**") affirmed the Judge's decision. They held that the applications failed because Article 39 of the Basic Law, together with section 11 ("**Section 11**") of the Hong Kong Bill of Rights Ordinance Cap. 383 ("**HKBORO**"), prescribe that BL rights do not extend to a non-Hong Kong resident insofar as they relate to immigration legislation and its application governing entry into, stay in and departure from Hong Kong.

Issues:

- (1)** When considering the application of a parent applicant, who is a foreign national with no right of abode in Hong Kong, for permission to remain in Hong Kong to take care of his/her minor child, who is a Hong Kong permanent resident, is the Director obliged to take into account the parent-and-child family's enjoyment of applicable fundamental rights while living in Hong Kong?
- (2)** Does Section 11 exempt immigration authorities from having to take into account rights protected under the Basic Law of a child member of the family, when decisions are made by immigration authorities under immigration legislation in respect of the non-Hong Kong resident family member impacting on the integrity of the family and the enjoyment of family life in Hong Kong?

Decisions of the Lower Courts

Court	Case Reference	Date of Judgment	Order
Court of First Instance (Au J)	HCAL 45 & 56/2014	12 January 2016	Applicants' applications dismissed.
Court of Appeal (Cheung CJHC, Lam VP and Poon JA)	CACV 59 & 60/2016	26 March 2018	Appellants' appeals dismissed.
Court of Final Appeal (Ribeiro and Fok PJJ, Stock NPJ)	FAMV 39 & 40/2018	7 November 2018	Appellants' applications for leave to appeal granted on questions of law of great general or public importance.

