

LEGCO QUESTION NO. 9

(Written Reply)

Asked by: Hon Dennis KWOK

Date of meeting: 20 May 2020

Replied by: Secretary for Security

Question:

The Immigration (Amendment) Ordinance 2012, which came into operation in December 2012, provides for a statutory process for making and determining non-refoulement claims. It also provides that a claimant who is aggrieved by the decision may lodge an appeal, which will be handled by a statutory Torture Claims Appeal Board (“TCAB”). The Government later introduced a unified screening mechanism (“USM”), which commenced operation in March 2014, to screen claims made by illegal immigrants refusing to be removed to another country on all applicable grounds (such as the risk of subjecting to torture or persecution). Besides, under the Immigration Ordinance (Cap. 115), the Director of Immigration (“the Director”) may, on an application of a claimant who has a substantiated claim, permit the claimant to take employment. In this connection, will the Government inform this Council:

- (1) of the respective numbers of claimants whose claims were substantiated under USM and by TCAB in each year since 2014;
- (2) of the average time taken for handling each of the claims mentioned in (1);
- (3) of the respective numbers of applications for taking employment received, granted and rejected by the Director in each year since 2014; if there were rejected applications, of the reasons for that;
- (4) of the average handling time, and the conditions imposed on the claimants, in respect of each of the granted applications mentioned in (3);
- (5) whether the Director has plans to shorten the time needed for processing applications for taking employment; if so, of the details (including the specific changes to be made and the timetable); if not, the reasons for that;
- (6) of the number of claimants mentioned in (1) referred to the United Nations High Commissioner for Refugees (“UNHCR”) for resettlement in another country; among such claimants, the number of those subsequently resettled, and set out, in respect of each of the resettled persons, (i) the

year in which the person left Hong Kong, and (ii) the time lapse from substantiation of claim to resettlement;

- (7) of the policy on assisting the claimants referred to UNHCR in preparing for their living after resettlement; and
- (8) of the date on which the Government last reviewed the humanitarian assistance programme for non-refoulement claimants, and whether it has plans to conduct a review shortly; if so, of the details and timetable?

Reply:

President,

The Government implemented the Unified Screening Mechanism (“USM”) in March 2014 to screen non-refoulement claims on all applicable grounds in one go. The United Nations’ Convention Relating to the Status of Refugees and its 1967 Protocol have never applied to Hong Kong, and hence illegal immigrants seeking non-refoulement in Hong Kong will not be treated as “asylum seekers” or “refugees”. The Hong Kong Special Administrative Region Government maintains a firm policy of not granting asylum and not determining or recognising refugee status of any person. Regardless of the outcome of their torture/non-refoulement claims, claimants are not permitted to remain legally in Hong Kong. If their claims are rejected, the Immigration Department (“ImmD”) will accordingly remove them to their countries of origin.

The Government’s reply to the question raised by Hon Dennis KWOK is as follows:

(1)

As at end April 2020, ImmD have determined 17 618 non-refoulement claims under USM, among which 179 claims were substantiated (including 97 claims substantiated by the Torture Claims Appeal Board (“TCAB”) on appeal). The substantiation rate is about 1%, i.e. about 99% are unsubstantiated. The breakdown by year is tabulated below:

| Year | Substantiated non-refoulement claims * |
|------------------------|---|
| 2014 | 1 (0) |
| 2015 | 17 (3) |
| 2016 | 30 (2) |
| 2017 | 38 (19) |
| 2018 | 41 (26) |
| 2019 | 38 (33) |
| 2020 (as at end April) | 14 (14) |
| Total | 179 (97) |

*Figures in () are the numbers of non-refoulement claims substantiated by TCAB

(2)

As regards the time for handling each claim, ImmD ensures that the screening procedures are highly efficient and achieve high standards of fairness through flexible staff deployment and optimised workflow. ImmD's handling time for each claim has been shortened from about 25 weeks on average at the early implementation of USM to the current average of about 10 weeks.

(3) to (5)

Non-refoulement claimants are illegal immigrants, overstayers or persons who were refused entry upon arrival in Hong Kong. They do not have any legal status to remain in Hong Kong. Regardless of the outcome of their claims, they have no right to work in Hong Kong. In February 2014, the Court of Final Appeal upheld in *GA & Ors v. Director of Immigration [(2014) 17 HKCFAR 60]* that substantiated claimants and mandated refugees recognised by the United Nations High Commissioner for Refugees ("UNHCR") have no constitutional or other legal rights to work in Hong Kong. Nevertheless, the Director of Immigration may exercise his discretion exceptionally to consider, on a case-by-case basis, an application for permission to take employment.

The numbers of applications made by the abovementioned persons for taking employment handled by ImmD since 2014 are tabulated below:

| Year | Applications received | Applications approved on discretionary basis | Applications rejected | Applications withdrawn or no further action could be taken |
|------------------------|------------------------------|---|------------------------------|---|
| 2014 | 21 | 5 | 3 | 10 |
| 2015 | 10 | 2 | 2 | 9 |
| 2016 | 24 | 14 | 5 | 9 |
| 2017 | 36 | 19 | 0 | 10 |
| 2018 | 62 | 42 | 0 | 7 |
| 2019 | 69 | 84 | 0 | 8 |
| 2020 (as at end April) | 37 | 38 | 0 | 1 |
| Total | 259 | 204 | 10 | 54 |

Note: Applications processed in a given year may not be those received in total in the same year. Applications approved, rejected, withdrawn or where no further action could be taken as listed above include those received by ImmD before 2014.

All related applications will be handled by ImmD in accordance with the procedures. The time required to assess and decide on an application depends on the complexity of individual applications and whether applicants have submitted all the required information and supporting documents in a timely manner. Applicants will also be reminded by ImmD that any failure to submit the required information or supporting documents (such as job duties, salaries and working hours, etc.) clearly set out in ImmD's correspondences will lead to longer processing time. There were occasions where applications were eventually rejected as a result of applicants' failure or refusal to provide the required information.

It normally takes about three weeks for ImmD to complete the processing of an application upon receipt of all the required information and documents. If the employment application is approved, the applicants will be allowed to work for their employers in accordance with the jobs prescribed in the contracts within the specified period of time and in the specified venue.

(6) and (7)

If a person's claim is substantiated, ImmD will withhold his removal and regularly review the latest situation of his case. Once his claimed risks cease to exist, ImmD will initiate the removal procedures. While withholding removal, ImmD will in parallel refer the person whose non-refoulement claim has been substantiated under USM on grounds of persecution risk to UNHCR for consideration of recognition as "refugee" under its mandate and arrangement of resettlement to a third country.

As at end April 2020, there were 179 claimants whose claims had been substantiated under USM. Among them, according to ImmD's record, no follow-up is required for 26 cases where the claimants already left Hong Kong or because of other reasons (including 4 resettled in a third country as arranged by UNHCR, and some other claimants who had departed Hong Kong voluntarily). Of the remaining claimants who have been referred to UNHCR, 130 of them are pending consideration and arrangement of resettlement to a third country. ImmD is arranging referral of cases of another 10 claimants to UNHCR.

It is the work of UNHCR to arrange for persons whose refugee status has been recognised under its mandate to resettle to a third country. The Government does not have the relevant statistics.

(8)

Since 2006, the Government has been providing humanitarian assistance to non-refoulement claimants to meet their basic needs. At the same time, the Government has to ensure that such humanitarian assistance does not become an incentive which would create a magnet effect in attracting more illegal immigrants to seek unlawful entry into and remain illegally in Hong Kong, in order to avoid serious implications on the long-term sustainability of our current support systems and immigration control. The expenditure on humanitarian assistance to non-refoulement claimants since 2014-15 is tabulated below:

| Year | Humanitarian assistance (\$ million) |
|-------------------------------|---|
| 2014-15 | 254 |
| 2015-16 | 489 |
| 2016-17 | 729 |
| 2017-18 | 587 |
| 2018-19 | 531 |
| 2019-20 (revised estimate) | 464 |
| 2020-21 (estimate) | 706 |

Such humanitarian assistance has always been provided to eligible claimants by a non-governmental organisation (“NGO”) commissioned by the Social Welfare Department (“SWD”). There is a cap imposed by the Government on the amount of assistance received by each claimant under each individual item. The NGO concerned will review the circumstances of claimants every month and decide on the exact assistance items and level based on their actual needs. If individual cases involve special needs, the NGO concerned will decide the amount of additional assistance according to claimants’ specific needs and based on their justifications and supporting documents provided.

The Government has been monitoring the operation of the assistance programme, as well as making reviews and improvements as appropriate, having regard to service needs and stakeholders’ views. Examples include paying the rent deposit and property agent fee for claimants, and improving the disbursement arrangement for transport and utilities allowance since 2014; replacing the in-kind food assistance with food coupons in 2015; and introducing food electronic tokens

in March 2017, etc. Through the NGO, SWD will keep monitoring whether the level of assistance meets the needs of service users.

(End)