Chapter 3

Cases of Public Interest or Concern

HKSAR v Li Qingbin

(FACC No. 7 of 2024)

The Appellant was a mainland resident who attempted to enter Hong Kong from the Chinese Mainland twice. The Appellant sought entry on 19 September 2018 with a passport of the People's Republic of China (PRC Passport), and on 3 May 2019 with a Mainland Exit-Entry Permit (EEP). The Appellant's dates of birth on the said travel documents were inconsistent.

The Appellant was refused entry on both occasions. Under caution, the Appellant admitted that his dates of birth stated in the above travel documents were both wrong. His actual date of birth was another date. He explained that the discrepancies arose from administrative errors and difficulties in rectifying his records due to lack of official proof of his birth since he was born in a rural village in the Chinese Mainland.

In respect of each entry attempt, the Appellant was charged with one count of "using a false travel document" contrary to section 42(2)(b) of the Immigration Ordinance, Cap 115 (IO), and one count of "making a false representation to an immigration officer", contrary to section 42(1)(a) of IO. Under section 42(5) of IO, "false" is defined to mean "false in a material particular".

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Proceedings in Courts below

The Magistrate's Court

(STCC 1794/2019)

On 5 July 2019, the Appellant was convicted of all four charges after trial and sentenced to 6 months' imprisonment. The Magistrate found that the inaccurate dates of birth on the Appellant's PRC Passport and EEP were "false in a material particular". Since the Appellant admitted that he had knowledge of such inaccuracy, by presenting and using the false documents, the Appellant had made statements or representations to immigration officers regarding his date of birth. The Magistrate held that the Appellant's difficulty of getting documents corrected did not amount to a reasonable excuse.

The Court of First Instance

(HCMA 372/2019)

The Appellant subsequently took his case on appeal to the Court of First Instance. On 6 December 2019, the Judge endorsed the Magistrate's view and dismissed the Appellant's appeal. The Appellant's leave application to appeal to the Court of Final Appeal (CFA) out of time was also dismissed by the Judge on 31 May 2023.

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The Court of Final Appeal
(FAMC 14/2023)

On 17 April 2024, the Appeal Committee granted leave to the Appellant to appeal to CFA and certified that the Appellant's case involved 5 questions of law of great and general importance formulated by the Appeal Committee.

(FACC 7/2024)

With the assistance of legal aid, the Appellant was represented by a Senior Counsel and a Junior Counsel in the appeal. On 2 June 2025, CFA unanimously dismissed the Appellant's appeal. The gist of CFA's determination on the 5 questions of law of great and general importance was as follows.

- ***Question 1: Was the principle of automendacity discussed in HKSAR v Chan Kam Ching (2022) 25 HKCFAR 48 applicable in respect of a charge of using a false travel document under section 42(2)(b) of IO?***

  CFA answered in the negative. The court in Chan Kam Ching held that falsity in the context of forgery-related offences required that the document must "tell a lie about itself", i.e. the automendacity principle.

  Section 42(5) of IO expressly provided that "forged" and "false" were to be given different meanings and should not be treated as concepts within the same genus. Therefore, the automendacity principle was inapplicable to a false document charge under IO.

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- ***Question 2: In considering the offences of section 42(1)(a) and/or 42(2)(b) of IO, especially in the context of verification by automated clearance facilities, should the Court pay regard to a traveller's contemporaneous explanation to immigration officers of the Immigration Department?***

  The answer was that use of false document in automated clearance facilities did not trigger section 42(1)(a) of IO until irregularity was detected by immigration officers because no statement or representation was made until irregularity was detected.

  In approaching this question, the Court should obviously pay regard to a traveller's explanation regarding use of a travel document which was false in a material particular. The legal consequences of such explanation, in terms of criminal liability or mitigation, would depend on the facts and on application of the relevant IO provisions.

- ***Question 3: When a travel document issued by an official authority contained an inaccurate date of birth and it could not be rectified due to lack of official register of date of birth, was the date of birth a false material particular and did the use of such travel document constitute offences under section 42(1)(a) and/or 42(2)(b) of IO?***

  CFA answered in the positive. Date of birth constituted a basic attribute of a person's identity and was obviously material to the exercise of immigration control. The Appellant's inability to rectify wrong date of birth did not affect the status of his travel documents being false in a material particular, although it might be relevant as a mitigating factor.

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- ***Question 4: When considering whether a traveller had the mens rea for the offences under section 42(1)(a) and/or 42(2)(b) of IO in the scenario set out in Question 3, did the Court need to find that the traveller knew that the date of birth was a material particular when he used the travel document?***

  CFA answered in the negative. The Prosecution was not required to prove, and the Court was not required to find that a defendant was aware of the materiality of the false particular. The assessment of materiality was an objective one in respect of its impact to immigration control and did not involve one's subjective belief.

- ***Question 5: If the answer to Question 4 was "No", was there an implied defence of reasonable excuse for the offences under section 42(1)(a) and/or 42(2)(b) of IO?***

  CFA answered in the negative. Unlike other IO provisions, section 42 of IO did not provide for such a defence.

Significance of the Decision

This CFA decision clarifies the interpretation of sections 42(1)(a) and 42(2)(b) of IO. It provides an authoritative guidance on how the law defines "false" under section 42 of IO. It also clarifies the limits of defences available to travellers facing charges under section 42 of IO.

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