



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/14254/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 29 May 2019

Decision & Reasons Promulgated  
On 25 July 2019

Before

UPPER TRIBUNAL JUDGE PITT

Between

M L D  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms L Profumo of Counsel, instructed by Sutovic & Hartigan

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

1. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. This is an appeal against the decision issued on 15 March 2019 of First-tier Tribunal Judge I Ross which refused the asylum and human rights appeal of the appellant.
3. The appellant was born in 1981 and is a citizen of the Philippines. The facts of her case are not in dispute. She comes from an impoverished background, her parents being uneducated farmers. She was educated to the age of 18 but her other siblings did not complete their education. The appellant's mother became unwell and in order to pay medical bills, her parents signed a bond over their land. As more money was needed to pay for her mother's medical care, the appellant, through a family friend, obtained work in Saudi Arabia. It is accepted that she was mistreated by the Saudi Arabian family for whom she worked.
4. The appellant came to the UK with the Saudi Arabian family on 17 June 2013 with entry clearance as a domestic worker. Her mistreatment continued after she came to the UK and she left them later in 2013. She sought advice from Kalayan, an organisation supporting domestic workers, regarding her immigration status. She was referred to the National Referral Mechanism (NRM) on 20 August 2015 as a possible victim of trafficking. She received a positive reasonable grounds decision on 26 August 2015 but a negative conclusive grounds decision on 9 January 2017. After legal proceedings, the respondent undertook to reconsider the conclusive grounds decision and, on 23 April 2018, it was accepted that the appellant was a victim of trafficking. She was granted leave as a domestic worker until July 2019.
5. On 13 June 2018 the appellant claimed asylum and made a human rights claim. Her claim was based on a fear of mistreatment on return to the Philippines from the Saudi Arabian family and the agency who had sent her to Saudi Arabia. Her claim was also that she feared re-trafficking were she to be returned. She also maintained that she should be granted leave to remain in the UK as removal would breach her rights under Article 8 ECHR.
6. The respondent refused the applicant's asylum and human rights claim in a decision dated 12 December 2018. The respondent accepted the appellant's identity and nationality and that she was a victim of trafficking. The respondent did not accept that she was a member of a particular social group, that she would be at risk on return to the Philippines or that her removal would amount to a breach of her Article 8 ECHR rights.
7. The appellant appealed the respondent's decision and the appeal came before the First-tier Tribunal on 25 January 2019. First-tier Tribunal Judge Ross found that the appellant was a member of a particular social group; see paragraph 14. That finding was not the subject of a cross-appeal by the respondent or disputed before me and so stands.
8. The appellant's history of abuse by the Saudi Arabian family was also accepted by the First-tier Tribunal; see paragraph 15. Indeed, the appeal proceeded by way of submissions only where "the material facts" were not in dispute, the First-tier

Tribunal also accepting that the appellant should be treated as a vulnerable witness in line with the “Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance”; see paragraph 6.

9. The First-tier Tribunal did not accept, however, for the reasons set out in paragraphs 16 to 18 of the decision, that the appellant faced a risk of persecution on return either from the Saudi Arabian family or the recruiting agents who had sent her to Saudi Arabia.
10. Judge Ross went on in paragraphs 19 and 20 to consider the claim to be at risk of re-trafficking on return to the Philippines. In support of that claim, the appellant relied on an expert report dated 17 January 2019 from Professor Sidel, Professor of International Comparative Politics at the London School of Economics and Political Science. The First-tier Tribunal found as follows:

“19. In terms of any risk of re-trafficking, I have had regard to Prof Sidel’s opinion at paragraphs 40 and 42 of this report, in which he points out that the appellant after many years of working in Saudi Arabia and the United Kingdom the appellant , ‘simply does not have the profile, credentials, or contacts needed for secure, stable employment’. He has also stated that the appellant would, ‘struggle to make a livelihood, and she would no longer be able to provide for her extended family as she has been doing for many years through her remittances. Against that backdrop there is a very real likelihood that the appellant would be susceptible to re-trafficking given the serious difficulties she is almost certain to experience should she be forced to return to the Philippines. These difficulties would be exacerbated by any harassment, intimidation or extortion she might face from the recruitment agency which arranged her employment in Saudi Arabia. But even in the absence of any such problems, the appellant would struggle to re-adjust and reintegrate yourself (sic) in the Philippines, especially in terms of her economic circumstances and that of her extended family. In this context, she might well opt to seek employment as a domestic servant to Saudi Arabia or somewhere else in the Gulf, and she does find herself subjected to the same kinds of dangers, difficulties, restrictions on freedom, and forms of indentured labour and exploitation which she experienced in Saudi Arabia and the United Kingdom. There is thus a real danger of re-trafficking.’

20. Given my finding that the risk to the appellant from the employment agency is purely speculative and not a real risk, I do not accept Prof Sidel’s opinion as to that risk. The appellant is now 38 years old. She has previously worked in the Philippines before she went to Saudi Arabia. The fact that she may face difficulties in obtaining employment in the Philippines because of a prolonged absence, does not entitle her to refugee status or humanitarian protection. I do not accept that her only option would be to return to Saudi Arabia or another Gulf state as a domestic worker. The appellant has family support in the Philippines, as she stated (sic) asylum interview, she maintains close contact with her family there, speaking to them at least once a week by telephone.”

11. The First-tier Tribunal also went on to dismiss the appellant’s Article 8 ECHR claim finding that she had only a limited private life in the UK, obtained while she was here precariously, and that she could be expected to reintegrate in the Philippines.

12. The appellant appealed against the decision of the First-tier Tribunal and in a decision dated 11 April 2019 was granted permission to appeal to the Upper Tribunal.
13. The grounds of appeal did not challenge the findings of the First-tier Tribunal that the appellant did not face a risk on return from the Saudi Arabian family or the organisation that had trafficked her. Those findings in the decision of the First-tier Tribunal therefore stand.
14. The grounds argued that the First-tier Tribunal failed to address, or address correctly, the appellant's claim that she faced a risk of being re-trafficked on return because of her particular profile. It was maintained that the components of this claim had been put clearly before the First-tier Tribunal in paragraphs 12 to 16 of the skeleton argument that had been provided. The appellant's evidence was not disputed and her witness statement dated 17 January 2019 also set out the basis of this claim. The witness statement indicated as follows:

"2. In relation to paragraph 18, in relation to our family land, this came about because of debt my family had accumulated because of my mother's hospital bills. Every time she had to go to hospital it would cost money. I could not pay. They gave us money but it was difficult to pay back. The interest on the debt kept rising and it will keep rising probably until I die. I am the only one that can pay. I am trying to pay but when I cannot work or I am not paid then I cannot pay the debt. I keep telling them that I will pay so that they do not take the land. All of my remaining family are living on that land. If they take that land then my family will be made homeless. If I lose hope then my family will lose everything. The land is not technically sold. It is in debt bondage. If I do not pay them back then it would go to them, but as long as I am paying the land is still technically our family's. Since I have gotten my leave here I have started to pay them back. At the moment it is 3 million pesos and that money keeps growing every months. The more I do not pay the more interest I have to pay. I was so happy when I got my right to work so that I was given the chance to work. Slowly, slowly I am paying it. I send my brother the money. Every two weeks I send him £300. This money goes just for the debt.

3. In relation to paragraph 19, it was difficult finding work. I was a contactor. So whether you are doing a good job or not, after 5 months your job ends. I think this is because after that the company have to pay tax. There was (sic) big gaps in between these jobs when I could not find any work. It is not easy to find work in the Philippines.

...

6. If I go back then I will have a lot of problems finding work and will have to go back to working abroad as a domestic worker. I am 38, nearly 39 years old. My education is for working as a domestic worker only. These jobs are all abroad. This is the only option. I need to work to pay off the debt or else my whole family will be made homeless. I will have to take whatever job I can find. Here in the UK I am not at risk. Here I am working as a

domestic worker. I do not live with my employer. This is safer for me. If they are not good to me I can walk away. All abroad domestic work you have to live with the family. So there is a chance that what happened to me will happen again. I believe that. I would have no choice. I am the only breadwinner of my family. That is why I'm not looking for a husband as I could not feed my family and my family in the Philippines. My family survive eating food off the farm. But they also have to buy things, such as rice and education. They have small jobs, only really enough to cover their daily needs. But anything additional to that, like education and paying off the debt, has to come from me as I am the only one that can get a good paying job like a domestic worker. You see on social media all the time that people are saying they are abused and raped in these jobs. Every time I see this I cry as I see my situation in what they are going through. This is why I am speaking up and went on the news, as I want people to know and not forget what we go through. Despite knowing this it is the only way to survive in the Philippines. This is the only job I can do, and I will do anything for my family. So there is a chance that if I go back I will have to take a job like this, and even worse things may happen to me.

...

8. In relation to paragraph 34 to 40, I am a victim of trafficking. I have no money. I would like to hide myself from my family so that they are not at risk from my former boss. If I did go back then I would have no choice but to go back to being a domestic worker and there is a real chance I will be trafficked and abused again. If I came back all my family's hope would be dashed because I am doing my best to support them and pay back the debt. I do not tell them about the bad things that happen to me as I don't want them to get upset about it and lose hope of being able to survive. If I went back my family would expect me to go back to work as a domestic worker abroad. They were very happy when I found out that I had a visa. They were happy that I would be able to send them money and support them."
15. The appellant repeated in paragraphs 17, 21 and 23 of her witness statement that she would have no option but to go abroad again as a domestic worker because of the economic situation in the Philippines and her obligations to her family even if this would expose her to a risk of re-trafficking because of her family's financial situation and the overall economic situation and social conditions in the Philippines.
16. The appellant's evidence was consistent with the information she provided to Kalayaan (at B55 of the appellant's bundle) and the Women and Girls Network (at B63), for example, regarding her ongoing trauma as a result of being trafficked and showing little regard for her personal safety in the face of the obligation on her to support her family.
17. As above, before the First-tier Tribunal the claim that the particular vulnerability of this appellant in the context of the Philippines gave rise to a risk of re-trafficking was supported by the expert witness, Professor Sidel. He set out his qualifications and expertise as a commentator on the socioeconomic situation in the Philippines at the beginning of his report and confirmed a correct understanding of his duty to the court in the final paragraph. It is not disputed that he has extensive first-hand

experience of the Philippines, having made thirteen trips to the country over the past six years, speaking two local languages and retains active contacts there. He has researched the reform initiatives taking place in the country, including economic policy. His experience and expertise were not disputed, albeit the First-tier Tribunal did not accept all of his comments, for example in paragraph 20 of the decision, set out above.

18. Professor Sidel made the following comments on the appellant's claim that she would be re-trafficked on return to the Philippines:

Paragraph 21:

"The Philippines still suffers from the highest rates of poverty, unemployment, social inequality and human insecurity among all the industrialised countries of South-East Asia...the accumulated problems of landlessness and rapid population growth have guaranteed a persistently large surplus labour force, keeping unemployment and underemployment high and wages low...with 26 million Filipinos estimated to be living in poverty...[23]..new employment opportunities have been largely restricted to the 'service' sector, with expansion limited to low-wage, low-skill jobs which overwhelmingly (75%) informational in nature and thus highly insecure"

Paragraph 24:

"In terms of problems associated with human trafficking, the Philippines has one of the worst records in Asia. There is a long history of overseas labour migration and many recruitment agencies brokering overseas contract labour ...guilty of various forms of fraud...leaving overseas contract workers cheated of their earnings and vulnerable to various abuses by their employers overseas."

Paragraph 27:

"Beyond the Philippines itself, a primary destination for victims of human trafficking is the Middle East, in particular Saudi Arabia...working conditions for Filipina domestic servants are notoriously difficult."

Paragraph 28:

"Wages are extremely low, with remittances to families and debt payments to labour brokers who 'facilitated' recruitment and employment eating up the lion's share of earnings. Migrant workers are subjected to a sponsorship (kifala) system which locks them in particular jobs. ... isolation in private homes, restrictions on freedom of movement. ... lack of information ... and their vulnerable immigration status render these migrant workers extremely vulnerable to ill-treatment and abuse, including physical and sexual violence and exploitation."

19. Professor Sidel goes on to consider the appellant's claim against the background evidence on the Philippines, finding in paragraph 38 that:

"She simply does not have the profile, credentials, or contacts needed for secure, stable employment. She would struggle to make a livelihood and would no longer be able to provide for her extended family as she has been doing for many years through her remittances"

and in paragraph 41 (quoted in paragraph 19 of the First-tier Tribunal

decision as set out above):

“Against this backdrop, there is a very real likelihood that [MLD] would be susceptible to re-trafficking, given the serious difficulties she is almost certain to experience should she be forced to return to the Philippines...even in the absence of (problems re recruitment agency) [MLD] would struggle to re-adjust and reintegrate herself in the Philippines, especially in terms of her economic circumstances and that of her extended family”

concluding in paragraph 42 that there is “a real danger of re-trafficking”.

20. Professor Sidel went on in paragraph 36 of his report that the respondent was “inaccurate and unrealistic in its understanding and expectations of the Philippine National Police” as to any protection that the appellant could expect on return. The organisation was “fundamentally corrupt and predatory” as had been consistently shown by journalists, human rights activists and scholars. He considered that the Recovery and Reintegration Program for Trafficked Persons was a “very poorly resourced programme without the funding or facilities to provide much in the way of shelter or support”. In addition, this organisation had given priority to victims of sex trafficking and there was “little reason” to expect that the appellant could obtain such assistance. In paragraph 38 Professor Sidel stated that the appellant would be “ineligible” for a programme providing conditional cash transfers and in his opinion she would fall through the official “safety net” provided by the government for the country’s media citizens as she did not have school age children.
21. There was no dispute as to the opinion provided by Professor Sidel being corroborated by the extensive country evidence relied upon by the appellant. The United States State Department (USSD) Trafficking in Persons Report 2016 at page C5 of the appellant’s bundle confirms that the Philippines is a source for forced labour, with an estimated 10 million Philippine nationals working abroad, a significant number comprising victims of trafficking in sectors including domestic work across inter alia the Middle East. The same source reported in 2018 on how traffickers, typically with local networkers or facilitators, engage in illegal recruitment practices that render migrant workers vulnerable to trafficking.
22. A report from the Office of the United Nations High Commissioner for Human Rights (OHCHR) at page C10 confirms that trafficking is prevalent in the Philippines, with socio-economic conditions, poverty, and unemployment amongst the drivers. The report comments that trafficking for labour exploitation has proliferated, borne from the ‘dire economic situation’ and that many of those who leave to work abroad are trafficked through recruitment agencies for forced labour/debt bondage. The same report confirms that trafficking for domestic servitude is one of the most prevalent forms of cross-border trafficking, owing to the high demand for female domestic workers and large number of Philippine nationals seeking overseas employment with some 30% of population going to work abroad in 2010 as domestic workers, with many more being clandestinely recruited.

23. The 2017 USSD Report on the Philippines comments on continuing reports of adults and children being exploited in domestic service and other informal sectors with 'unscrupulous' employers subjecting women from poor rural or urban areas in particular to domestic servitude. The Trafficking in Human Beings from the Philippines report at page C87 of the appellant's bundle identifies that the majority of victims of trafficking were trafficked with a recruiter or placement agency, willingly travelling abroad and deceived as to the nature of work and conditions of employment upon arrival.
24. The same reports were equally consistent on the lack of effective state protection for potential and actual victims of trafficking, notwithstanding some limited steps that had been taken by the Philippines authorities, for example in the USSD Trafficking report for 2018 on page C5 of the appellant's bundle and the OCHCR report at pages C18 and 19. There were numerous references to the complicity of law enforcement and other agencies in trafficking; see, for example, pages C5 and C17. A European Parliament Resolution dated 19 April 2018 at page 46 of the bundles expressed alarm at the increasing level of corruption in the Philippines.
25. Having considered the materials put before the First-tier Tribunal concerning the appellant's claim to fear re-trafficking and the findings made on those materials in paragraph 20 of the decision, it is my conclusion that the assessment conducted by the First-tier Tribunal contained a material error of law. Firstly, in paragraph 20 of the decision, the First-tier Tribunal rejects the evidence of Professor Sidel on the risk of re-trafficking because he considered that the appellant was at risk from the employment agency, a part of the claim found elsewhere by the judge to be "speculative". However, Professor Sidel stated clearly, as set out by the First-tier Tribunal in paragraph 19 of the decision, that the risk of re-trafficking existed "even in the absence" of a risk from the employment agency. The First-tier Tribunal rejected his comments on the general risk of re-trafficking on an incorrect basis, therefore.
26. Secondly, as indicated above, in addition to the expert report, there was a clear consensus in the country evidence from reputable sources on the prevalence of trafficking in the Philippines and the decision of the First-tier Tribunal does not engage with that evidence at all. Put simply, there was a great deal of evidence before the First-tier Tribunal capable of showing that the socioeconomic situation in the Philippines was so serious that it was reasonably likely that the appellant would have to go abroad in order to support her family and confirming that trafficking of those going abroad, even voluntarily, as domestic workers was widespread.
27. Thirdly, as above, the material parts of appellant's evidence here was not disputed (see paragraph 6 of the decision) and she was clear that she would be under an obligation to go abroad again to try to support her family. This had undisputedly happened in the past and the expert report and country materials strongly supported this part of her evidence as to her being obliged to go abroad again if returned.



28. Fourthly, the appellant's particular profile as someone who had previously been trafficked and the role this factor played in a future risk of re-trafficking was not addressed. The First-tier Tribunal had also been asked to consider the guidelines in HD (Trafficked women) Nigeria CG [2016] UKUT 00454(IAC) but did not do so. This was potentially material here where the evidence was that having relatives in the Philippines was not a protective factor but added to the pressure on the appellant to go abroad again as a domestic worker. As in Professor Sidel's report, her lack of education or vocational skills added to the pressure to go abroad as she would be very unlikely to find work in the Philippines. She was a vulnerable person because of her previous experiences and the pressure on her to go abroad again if returned. As someone who had previously been trafficked and disclosing characteristics of vulnerability she was likely to be identified by traffickers within the domestic worker arena and at a higher risk of being trafficked.
29. For these reasons, the decision of the First-tier Tribunal on the risk of re-trafficking discloses a material error on a point of law and must be set aside to be re-made. The findings on a risk from the Saudi Arabian family and the employment agency remain intact.
30. Ms Profumo and Mr Melvin agreed that the re-making could proceed by way of submissions only given that the material evidence on this part of the appellant's claim was not in dispute.
31. The appellant has been consistent as to being under an obligation to support her family and that this will force her to go abroad again as a domestic worker. The family debt that led to her going abroad in 2012 has increased. The amount owed by the family is approximately £45,000 and without being able to remain on the land underpinning the debt she and her family would face destitution. As before, this is not a case where the credibility of the appellant has been in issue. Further, the expert report and country material supports the appellant's evidence on the socio-economic situation in the Philippines being such that she would not be able to find work and would go abroad again to prevent her family facing destitution. The expert report and country materials shows that this is commonplace, in addition to this being the accepted history of this appellant.
32. The question in this appeal, then, is not whether the appellant will go abroad to seek employment to support her family but whether, when doing so, her particular profile is such that she will face a real risk of re-trafficking. The expert report again provided support for this being the case for this particular appellant because of her vulnerability as someone who has already been trafficked and the pressure on her to go abroad being particularly acute as it would not be merely for her own gain but in order to prevent her family becoming destitute if they lost their land. As Ms Profumo submitted for the appellant, the fact that she would "voluntarily" undertake a risk of facing further abusive treatment as a domestic worker does not mean that she could not be said to be at a risk of trafficking. Her decision to go abroad previously did not prevent her from being found to be a victim of trafficking by the National Referral

Mechanism. Further, as set out above, the expert report and country evidence is clear and consistent as to there being insufficient protection provided by the Philippines authorities for prospective victims of trafficking and those previously trafficked. someone with the appellant's profile.

33. The country evidence identifies a "significant number" of domestic workers as victims of trafficking (the USSD report) and refers to exploitation of female domestic workers being "one of the most prevalent forms of cross-border trafficking" (the OCHCR report). The appellant's case is not that the country evidence is sufficient to show that all of those who go to work abroad as domestic workers face a real risk of being trafficked. It has already been accepted that the appellant is a member of a particular social group as someone who was trafficked in the past. It is my conclusion that her profile is raised by the factors of her having been trafficked previously, her vulnerability arising from that and the particular pressure on her to travel abroad to support her family. I am satisfied that those aspects of her profile place her at additional and, in my conclusion, real risk of re-trafficking over and above others going abroad as domestic workers.
34. For these reasons I find that the appellant has shown that she will face a risk of mistreatment on return to the Philippines for a Refugee Convention reason and I allow her asylum claim.

### **Notice of Decision**

35. The decision of the First-tier Tribunal discloses an error on a point of law such that a further assessment must be conducted as to whether the appellant faces a risk of re-trafficking on return to the Philippines.
36. The asylum appeal is allowed.

Signed   
Upper Tribunal Judge Pitt

Date 17 July 2019