



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/03938/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 January 2014**

**Decision Promulgated
On 3 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**LUWANG TERRONES
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Lashley-Bobb of the Afro-Asian Advisory Service
For the Respondent: Mr P Duffy Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This was an appeal by the Appellant against the decision of First-tier Tribunal Judge Callender-Smith promulgated on 16 September 2014 which allowed the appeal

although the basis of the Judge's decision was unclear and became the subject of an appeal to the Upper Tribunal that came before me on 3 December 2014.

3. The appeal against the decision of First-tier Tribunal Judge Callender - Smith was allowed by me on the basis that he had failed to make clear that he was addressing the United Kingdom's obligations under Article 4 of ECHR rather than the decision of the National Referral Mechanism as he suggested at paragraph 2 of his decision because this decision does not carry a right of appeal.
4. The Judges factual findings that the Appellant was in fact a victim of trafficking contrary to the NRM decision I found was open to him. Those findings were preserved and were set out in paragraph 40 of his determination:

"I make the following findings of fact- based on my findings of fact in relation to the Appellant's credibility-in relation to the 2000 Palermo Protocol and Article 4 (h) of the Council of Europe Convention on Action against Trafficking in Human Beings:

- (1) *The Appellant has been an individual who has been subject to an act of recruitment, transportation, transfer , harbouring or receipt her original Saudi Arabian employer recruited , transported and transferred the Appellant's services to her brother and his wife who had a property in London.*
- (2) *The means used for that was the coercion by way of abuse of power and position of vulnerability used to achieve the consent of the Appellant in respect of the new employment.*
- (3) *The purposes of 1 and 2 above was for the exploitation of the Appellant in terms of forced labour or services or slavery or practices similar to slavery and servitude."*

5. The Judge also made findings at paragraph 43 and 44 of his decision that I found no reason to disturb that there was an ongoing police investigation by the Metropolitan Police Trafficking and Trafficking Kidnap Unit.
6. At the hearing I heard submissions from Mr Duffy on behalf of the Respondent that :
 - (a) Article 4 is forward looking. There may be a finding that the Appellant had been a victim of trafficking but there was no risk going forward. The Appellant had not suggested that she was in fear of traffickers on her return to the Philippines.
 - (b) There was only a breach of Article 4 if the decision made engages with the Convention on Trafficking and the Respondent had failed to carry the responsibilities and in those circumstances the Respondent had a duty to issue leave.
 - (c) The Respondent's obligation to issue leave in such circumstances was set out in the policy document 'Victims of Human Trafficking-competent authority guidance October 2013 at pages 98-100.
 - (d) There were two circumstances set out in the policy that would warrant a grant of leave. The first was in relation to the personal circumstances of the Appellant: the Appellant in relation to this was relying on the fact that the Appellant had an appointment for assessment for counselling. This was too early in the process

to suggest that the Respondent's responsibility to grant leave was triggered. The second situation was where the police requested leave be granted because the applicant was assisting with their enquiries. The police in this case had indicated that no further action was to be taken.

- (e) The Appellant therefore did not engage the obligations of the Convention as she did not engage either limb of the policy.
- (f) In relation to EK (Article 4 ECHR : Anti Trafficking Convention) Tanzania [2013] UKUT 00313 (IAC) he suggested that this case could be distinguished as the Appellant's medical condition in that case was more clearly one that required ongoing treatment.

7. On behalf of the Respondent Ms Lashley Bobb submitted that :

- (a) The Appellant was a victim of trafficking as defined by the Palermo Protocol and thus Article 4 was engaged.
- (b) The issue then became what were the obligations of the United Kingdom by virtue of her status as a victim of trafficking. In relation to this she referred to a number of documents in her bundle but in particular the Palermo Protocol 2 (b) where the emphasis was on assisting and protecting the victim.
- (c) There were two elements to the responsibility of the Respondent which might give rise to the grant of discretionary leave.
- (d) The first was that a criminal investigation was underway. She did not accept that the police had decided no further action was to be taken and indeed she herself had been present at a meeting between a DC Rachidi and the Appellant on 17 December 2014 where the ongoing investigation was discussed. She accepted that a file had not gone forward to the CPS as of yet but argued that the Respondent's policy made no distinction between investigation and prosecution.
- (e) The second situation was in relation to the Appellant's 'personal circumstances'. The efforts that had been made to arrange counselling for the Appellant were set out at pages 138-152 of the Appellant's bundle. These began in July 2014 and it was regrettable that it had taken so long to arrange.
- (f) In the light of the matters that were outstanding, both the police investigation and the Appellant's need for counselling she submitted that this was an appropriate case for the Secretary of State to exercise her discretion by granting a period of discretionary leave: failure to do so amounted to a breach of her international obligations.

Findings

8. I am required to look at all the evidence in the round before reaching any findings. I have done so. Although, for convenience, I have compartmentalised my findings in some respects below, I must emphasise the findings have only been made having taken account of the evidence as a whole.

9. The Appellant is a national of the Philippines who made an application on 4 July 2013 for Leave to Remain as an Overseas Domestic Worker under paragraph 159 of the Immigration Rules. Her application was refused in a decision dated 7 January 2014 and the Appellant accepts that she cannot meet the requirements of the Rules.
10. I am satisfied however that the Appellant is, as the previous Judge found, a victim of human trafficking for Domestic Servitude. While I note that the National Referral Mechanism made a negative decision I accept as the previous Judge did that this tribunal was not bound by that decision and thus the previous Judge made the factual findings that I upheld.
11. I also note that it has never been the Appellant's case that there is a risk for her on return to her country of origin nor that she has been so affected by her trafficking that she is unable to work. She herself changed her employer (which was one of the reasons she could not meet the requirements of the Rules) and had expressed a desire to continue working in the United Kingdom.
12. The Appellant argues that against the finding that she has been trafficked her rights in terms of Article 4 of the Convention and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ("the Palermo Protocol") had been breached on account both of her being trafficked into the United Kingdom and then subsequently trafficked within the country and she was entitled to a grant of discretionary leave to take advantage of the operational measures to protect both victims and potential victims of trafficking whose guidelines have been set out in the document produced to me 'Victims of Human Trafficking'.
13. I accept that the Guidelines set out two circumstances in which a grant of discretionary leave should normally be made and I will examine these below.

Personal Circumstances

14. In relation to personal circumstances (page 98 of the Guidance) there is little evidence before me suggest that the Appellant has been identified as someone who will benefit from any kind of medical treatment as the process is at such an early stage. There is an email dated 31 July 2014 responding to a query about counselling stating that those contacted were unable to respond due to a high referral rate and there is no more recent evidence to suggest that such counselling has taken place or what any future requirements would be. The case of EK is distinguishable in that it relates to a victim with well documented ongoing significant medical needs.

Police Investigation.

15. Mr Duffy asserted that the police had taken the decision that there was to be no further action in respect of the investigation as to whether the Appellant had been the victim of a crime. There is no documentary evidence before me originating from the police to suggest that this decision has been made.
16. What is clear is that as of the date of the last hearing 8 September 2014 a DC Karen Anstiss of the Metropolitan Police Trafficking and Kidnap Unit was investigating the criminal elements of the trafficking allegation against Prince Faizal Bin Turki al-Faizal and this was confirmed by the officer in a letter dated 5 September 2014. The officer

had confirmed that the Prince did not have diplomatic immunity and there was a meeting with him to progress the investigation on 22 February 2014.

17. The Appellant through Ms Lashley Bobb confirmed that she had not received anything from the police to suggest that the decision had been made not to prosecute and indeed Ms Lashley Bobb explained to me that she had been present with the Appellant at a meeting with the police as recently as 17 December 2014 to discuss the ongoing investigation. While I have nothing from the police to confirm this I have no reason not to accept what Ms Lashley Bobb tells me.
18. I am therefore satisfied that there is an ongoing investigation into the commission of criminal offences arising out of the Appellant being trafficked. That is not however the end of the matter and does not result in an automatic entitlement to a grant of leave. The Respondent's Guidance document envisages that the Respondent may grant a period of 12 months discretionary leave where a victim has agreed to co operate with police enquiries in the United Kingdom but adds '*the police must make a formal request for them to be granted leave to remain on this basis.*' (page 101 of 115) the rationale of this may be that the policy envisages later on the same page that there is the possibility of victims assisting with police enquiries from abroad as criminal investigations and even trials allow for the possibility of evidence from victims being given remotely.
19. There is no evidence before me from the police or any other agency to suggest that the police require the Appellant to be present in the United Kingdom either to pursue their investigation or indeed even to prosecute any perpetrator.
20. I am therefore satisfied that the Appellant cannot succeed under Article 4 as although I accept that it is engaged by the finding that the Appellant was a victim of trafficking there has been no violation as it cannot be demonstrated that there is any ongoing obligation which the Respondent has failed to fulfil. There is no clear evidence about ongoing medical requirements arising out of her being trafficked and while I accept that there is an ongoing police investigation the Police have not indicated that they require her presence in the United Kingdom in order for that investigation to progress.

DECISION

21. **The appeal is dismissed on all grounds.**

Signed

Date 30.1.2015

Deputy Upper Tribunal Judge Birrell