



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03075/2015

THE IMMIGRATION ACTS

Heard at Manchester
On 21 November 2017

Decision promulgated
On 08 March 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

VTH
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Warren instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr C Bates Senior Home Office Presenting Officer

DECISION AND REASONS

1. By decision promulgated on 18 July 2017 the Upper Tribunal found the First-tier Tribunal had erred in law in allowing the appellant's appeal on asylum and human rights grounds against a decision not to revoke a deportation order made against her.

Background

2. VTH is a citizen of Vietnam born on [] 1974. VTH was encountered by the police and arrested on suspicion of being an illegal entrant on 6 January 2009 at which point VTH provided a false identification which was only revealed when the Secretary of State undertook checks following an asylum claim which revealed VTH's true identity, and the fact she had previously claimed asylum and been refused asylum in Germany on 17 October 2006. VTH was granted temporary admission with the direction she was to report to the immigration authorities, but absconded.
3. On 30 May 2014 VTH was arrested by the Dorset Police in relation to a suspected drug offence. On 8 October 2014 VTH was convicted before the Bournemouth Crown Court of being concerned in the production of Class B controlled drugs, namely, cannabis, and on 15 December 2014 was sentenced to 18 months imprisonment. A deportation order was signed and served upon VTH.
4. On 4 March 2015 VTH claimed she was a victim of human trafficking and on 1 April 2015 an asylum claim was lodged which was refused by the Secretary of State who also decided it was not appropriate to revoke the deportation order because no exception under section 33 of the UK Borders Act 2007 applied. The appeal before the Judge was against the decision that no such exception applied, i.e., that VTH was entitled to protection under the Refugee Convention or that removal would be contrary to Article 3 and Article 4 of the European Convention on Human Rights.
5. The appellant failed to attend the Upper Tribunal hearing which proceeded by considering the advocates submissions based upon the evidence available from other sources.

Preliminary issue

6. At the commencement of the appeal Miss Warren raised concerns relating to additional documents provided by the Secretary State arguing that the author(s) of the documents are not properly identified and that there is a need for certainty regarding how the documents came into existence. It was submitted that the weight to be given to a document from a [TT] should be reduced as the statement was not signed and so the Tribunal should not rely upon the same as the provenance of the document was uncertain. It was also submitted that two further witness statements, by another individual, are generic in nature and not reliable.
7. Mr Bates submitted the statements had been electronically signed by the author and provided copies of the emails showing when they had been received which had been shown to Miss Warren at the hearing. There was clear evidence of communication with [TT] in English indicating there was no need for an interpreter to have been employed. The named gentleman is also employed by the British Embassy in Hanoi and can speak English. The emails evidence when the statements were received.

8. This tribunal has no concerns regarding the provenance of the statements such that they should be disregarded. The submission the statements are generic may, in part, be true but there still relevant to the issues in this appeal arise. The statements are admitted with the tribunal giving due consideration to the weight that it considers maybe attached thereto.

Summary of the submissions:

Miss Warren

9. Miss Warren submitted the issue relevant to assessing risk on return is the real risk of the appellant being re-trafficked. It was submitted the appellant would have difficulties reintegrating and that her family could not ameliorate the risk on return solely due to their presence. It was submitted that as a victim of trafficking there was a real risk of re-trafficking in Vietnam for which there was no sufficiency of protection. It was argued the appellant's family will not be able to support her and she will be without support or protection from the authorities.
10. It was submitted there is no challenge from the respondent to the appellant's assertions relating to her family, set out in a supplemental witness statement dated 2 August 2016, where at [10 – 11] the appellant stated:
- “10. Further to paragraph 29 of my 27 January 2016 statement, I was released from Yarl Wood on 13 April 2016. I am still in occasional contact with my family, and although they do not know what I have gone through, my husband keeps telling me that I have gone to the UK to become a prostitute. He is very abusive about this and have even turned my children against me. If my family knew what I have gone through they would think it was my fault and would not have anything to do with me.
11. Even if I am returned to Vietnam I cannot return to my family and will not be able to live with them. My children used to respect me but now they listen to their father and they do not want anything to do with me. My son has told me not to return home as my husband does not want me. My husband was always abusive and I am afraid that if I am returned home then he would harm me, I have nowhere to go to if I am removed to Vietnam.”
11. It was also submitted the appellant has mental health issues, psychiatric reports mentioning vulnerability in the appellants background and problems and the fact the children are settled with their father. Miss Warren submitted the family are not predisposed to help.
12. A report prepared by Dr Laura Kemmis, a psychologist, dated 7 September 2015 has been provided in the appellant's appeal bundle. Miss Warren refers to [47] of that report where it is written:
- “47. [VTH] has expressed the shame she feels about her past traumatic experiences and risk of being deported and forced back into prostitution will be likely to have a detrimental effect on her mental health and increase the risk of suicidal ideation. Even if [VTH] is not re-trafficked to Vietnam she is likely to face reintegration challenges if returned due to the experiences she has been

through. [VTH] reports she has attempted to conceal her traumatic history from her family however, she fears as her history may be disclosed by the agents which may result in her being ostracised by her family and community which would also be likely to impact on her mental health and ability to cope if deported to Vietnam.”

13. Miss Warren argued the connection between the appellants fear the family may be advised of what had occurred by the agent is the issue of debt bondage. Miss Warren sought to rely upon a report prepared by Mr Mark Sidel, a Professor of Law and Public Affairs at the University of Wisconsin Law School, University of Wisconsin - Madison in the United States of America, dated 23 May 2016 who at [51] deals with the issue of re-trafficking in the following terms:

“51. Individuals who report that they have been trafficked remain in plausible fear that if they are returned to Vietnam, they may be retaliated against, physically, emotionally and financially, or subject to re-trafficking. These risks on return of documented in numerous governmental and non-governmental reports. For example, the UK Child Exploitation and Online Protection Centre Strategic Threat Assessment - Child Trafficking in the UK 2010 specifically noted the “fear of reprisals from Chinese and Vietnamese trafficking networks which are far-reaching, more structured and powerful than those observed in other profiles.” These situations - reprisals, retaliation’s, re-trafficking - have occurred in debt bondage and debt recovery contexts, such as the type of context that [VTH] instructs occurred with her.”

14. Miss Warren submitted in this case the appellant had been trafficked by an organised criminal gang for cannabis cultivation in the UK giving rise to the risk of retaliation. It was submitted that as it is a network it means they could locate the appellant if she was returned to Vietnam and that the Vietnamese government is unable to fund and/or protect her in addition to issues of corruption.
15. It was submitted that if the appellant is in debt bondage to her traffickers and they are able to trace her, there is a real risk of her being re-trafficked from which no sufficiency of protection has been shown to exist. It was also submitted the country materials indicate there is governmental involvement in such networks.
16. An additional report prepared by Elizabeth Flint, described as an independent consultant with expertise in human trafficking, sexual and gender-based violence and refugee resettlement, dated 4 April 2016, deals with the link between debt and the family of those trafficked in the following paragraphs:

“132. On release from the police station [VTH] did not know where to go. She was culturally, socially and linguistically isolated. She felt she had no alternative but to follow the two men she had been arrested with ([16] of the statement). She was registered as an absconder on 1 February 2009 after failing to report to the authorities ([2] of Claimant statement of facts and Grounds). The two men exploited their power over her and her vulnerability to re-traffick her. They confiscated the papers [VTH] had been given by the police and transferred her to a property where there was a third man ([16-17] of her statement). [VTH] was harboured at the property and raped by all three men.

The next day one of the men left and thereafter [VTH] was held in the property for nearly a year and repeatedly sexually exploited by the two remaining men. They used various means to control her including sexual violence and locking her inside the property. She was instructed to say that one of the men was her boyfriend if anyone asked her about the nature of her relationship to the men ([17] of her statement).

137. Thereafter NT persisted in contacting [VTH] asking her if she had a job. When [VTH] told NT that she was without work he offered her a job cleaning and looking after plants, at his house. This offer appears to be [VTH's] recruitment into forced labour and forced criminality. She was given no further information about the nature of the work. She was told she would be paid £200 at the end of the week. [VTH] agreed and was subsequently collected and taken to the property where she was harboured and exploited in forced labour and forced criminality for drug (cannabis) cultivation. Less than a week later [VTH] and NT were arrested at the property ([25-26] of the statement).
156. Some of the above push and pull factors mirror the experiences of [VTH]. Her traffickers deceived her and exploited her vulnerability. They took advantage of the financial difficulties her and her family were facing to recruit her at a time when she felt desperate about her circumstances. She was brought on a circuitous route to the UK punctuated by exploitation, violence and brutality. The trauma may have disorientated her and undermined her ability to recall the full details of her history.
159. IOM states that debt bondage is extremely common for children trafficked from rural regions in Central and South Vietnam. Debts may not be placed on the victim in their entirety – in many cases parents are expected to pay half of the fees. These families are not able to borrow money from banks, so turn to relatives or moneylenders. Moneylenders are often connected to the trafficking networks and act as an extra mechanism to further exploit the vulnerable victim and their family, as the debts are often subject to high interest rates. Families will be forced to sell their property to pay off the debts, particularly those secured through banks. Those family members who cannot pay off the debts have been subjected to violence and maiming, and some may have been killed.
160. [VTH] was exploited in cannabis cultivation. This type of drug cultivation is well recognised as a significant problem in the UK. ACPO, in a 2012 *UK National Problem, Profile Report entitled Commercial Cultivation of Cannabis in the UK* state: 'the threat from the domestic commercial cultivation of cannabis in the UK is increasing. There has been an increase in robberies, burglaries and violence (including the use of firearms) linked to cannabis farms.'"
17. The appellant's account is that the main debt owed to the traffickers is secured by collateral on family assets but that there is still approximately £6000 outstanding which the appellant submitted could be part of the reason the family would not provide her with protection.
18. In relation to the risk on re-trafficking it was submitted Elizabeth Flint, at [171 - 175], writes:

- “171. In my opinion [VTH] would also be at risk of re-trafficking if returned to Vietnam because of a number of different vulnerability factors, including but not limited to: a history of exploitation; the history of domestic violence; the debt bondage and that of her family; her history of relationships of dependency; her history of trauma; and her fragile mental health evidenced by Dr Kemmis’s diagnosis of PTSD and Major Depressive Disorder.
172. In my opinion, [VTH] would also be vulnerable to re-trafficking if returned to Vietnam if she were to return to some of the same push and pull factors that led her to leave in the first place. Push factors include: poverty; debt bondage; a history of domestic abuse and violence; a lack of education and employment opportunities. If she were re-traffic to pull factors might include: an offer of education or employment or an opportunity to improve her and her children’s quality of life or to repay her debts enabling her to keep her family safe and free from threats; a desire to escape the shame, humiliation and stigma often attached to being a victim of trafficking.
173. In my experience, support is a key protective factor against the risk of re-trafficking. If [VTH] cannot access specialist trafficking support on return to Vietnam that can help her to reorganise relationships that may be harmful to her and foster rehabilitation then I am concerned that she may find herself vulnerable to exploitation again. I note from the 2015 TIP report on Vietnam that there are a number of shortfalls in protection and support for victims of trafficking in Vietnam. It states:

‘The government demonstrated modest efforts to protect victims. In 2014, authorities identified 1031 potential trafficking victims but did not report how many were exploited in sex or labour trafficking, how many were adults or children, or how many were exploited in Vietnam or abroad. In comparison, authorities certified 982 trafficking victims in 2013. Victim identification and referral mechanisms remained weak throughout the country. The government had a formal procedure for victim identification, but it did not proactively employ it to identify victims among vulnerable groups, such as women arrested for prostitution, migrant workers returning from abroad, and child labourers. It also did not systematically refer victims to protective services due to inadequacies that persisted in its formal referral process. Officials continued to conflate trafficking with smuggling, which precluded the identification of victims who voluntarily migrated abroad.

174. And:

‘protection services vary by location but generally included legal aid, counselling, shelter, vocational training, healthcare and financial allowances. Authorities did not report the number of victims who used the one-time government cash subsidy – up to 1 million dong (\$50). MOLISA’s social protection centres, which provide services to a wide range of vulnerable groups, sometimes housed trafficking victims; the centres are often underfunded and lack appropriately trained personnel to assist victims. The Vietnam Women’s Union, in partnership with NGO’s and with foreign donor funding, continued to operate three shelters in urban areas, one of which was trafficking specific. Vietnam

had no shelters or services specifically for assisting male or child victims and none devoted specifically to victims of labor trafficking’.

175. When looked at together with Vietnam’s ‘Tier 2’ rating the available information points to a number of serious shortfalls on the part of the Vietnamese Government in providing adequate protection and support to victims of trafficking.”
19. The report indicates at [176] that a ‘Tier 2’ rating denotes: ‘countries whose governments do not fully comply with the TVPA’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards’.
 20. Miss Warren submitted the appellant is keen to keep knowledge of her experiences from her family. She is concerned that as a result of mental health issues identified in the psychologists report it is likely the family will be aware that something had occurred as a result of her presentation. It was argued this is not conducive to the appellant’s protection and that the appellant needs assistance in the process of her recovery. It is argued that without such assistance there could be a significant impact upon her mental health in the future.
 21. It was also submitted by Miss Warren that if the appellant returns to her family this would make her traceable as agents had been in touch with her family.
 22. In relation to the issue of corruption, Miss Warren refers to an addendum report prepared by Mr Mark Sidel dated 30 October 2017 in which there is reference to the issue of corruption.
 23. In addition to the submissions regarding the lack of sufficiency of protection, Miss Warren submitted it was also not reasonable to expect the appellant to internally relocate on the evidence. It was argued that without the benefit of expert intervention the appellant’s mental health will not improve. Miss Warren places reliance upon a second medical report prepared by a Dr Brock Chisholm, a Chartered Clinical Psychologist, dated 28 October 2017 who states at page 404 [66] that ‘[VTH’s] PTSD is very severe and that it cannot worsen very much before her symptoms hit a ceiling level’. It was submitted that in addition to this the appellant has cognitive issues such as learning difficulties and that if she was returned to Vietnam she will face the subjective fear referred to in the evidence and she will remain isolated.
 24. Miss Warren submitted that despite the preserved findings, that the appellant is a victim of trafficking, the respondent has not taken steps to check if she needs time to enjoy a period of ‘rest and recovery’ which it was submitted is a breach of Article 4 of the Trafficking Convention and which should be a gateway to assistance by of counselling and specialised help. It was submitted that one cannot say what in the future would happen as the gateway work has not been undertaken.

25. In relation to the existence of shelters and provision of assistance, it was submitted by Miss Warren that the provision of the same is problematic. The addendum report of Mark Sidel dated 30 October 2017 refers to the lack of shelters. It was also submitted that the appellant has a number of specific needs which are heightened in her case in addition to the basic needs such as employment and housing. As a result of the problems regarding her functioning the appellant would find it difficult to achieve the same in Vietnam. It was submitted her family will not assist her as they had ostracised her and she will be left alone.
26. Miss Warren submitted that although the respondent could say she could provide assistance, the evidence is generic and does not say what is specifically available to the appellant or if the same could be provided. It was argued that although the evidence says there are shelters run by local government it did not say what would happen regarding a returnee from the United Kingdom or that the appellant will be admitted into such shelters. It was argued there is no evidence of the range of partners the British Embassy has ties with in Vietnam and that the respondent's witness statements failed to deal with the specific needs of the appellant.
27. In relation to the issue of traceability – Miss Warren submits that the appellant will require a national identity card and that as there exists a family system there was a real risk in this case, in light of the links with officials and traffickers, that they could obtain information relating to the appellant's whereabouts.

Mr Bates

28. On behalf of the Secretary of State Mr Bates submitted that the appellant's own evidence referred to family being available in Vietnam including the appellant's children, grandparents, and parents. It is also the case the appellant came to the United Kingdom for employment and that she left Vietnam willingly and was not coerced. It was submitted the act of trafficking occurred after the appellant had left Vietnam.
29. Mr Bates submitted that as the appellant had not told her family she came to the UK to be a prostitute it was not clear how the family would discover this which, it was submitted, is an attempt to embellish the account. The claim of no family support was not accepted by the Secretary State in light of the fact the appellant has a sister and adult children. It was also submitted that despite claiming that all the family are against her the appellant has maintained contact with them. Mr Bates submitted there will be little purpose in maintaining contact if the appellant never returned to Vietnam and that she could be supported by the family there if she was. It was submitted the reason such contact was maintained was because the appellant intends to see her family so she would not want to tell them what had occurred. It was submitted that such contact also undermined her claim to have been ostracised.

30. In relation to the issue of learning difficulties, it was argued there was insufficient assessment provided by the appellant in relation to such issues. The psychiatric report of Dr Chrisolm also states at [65] *“she may require additional support if she does have a learning disability, although I think she can live independently”*. Mr Bates also referred to [66] where it is written *“in my opinion, if she continues to be as isolated as she is, her low mood will worsen and she may therefore be at risk of suicide. However, her PTSD is very severe, and it cannot worsen very much before her symptoms hit ceiling level”*. It was submitted that the issue of isolation in the United Kingdom exasperates the appellant’s mental health presentation where as if the appellant is able to be reunited with her family in Vietnam the situation will be different.
31. In relation to the context of trafficking, Mr Bates argued there was not one continuous chain of events. The appellant refers in her witness statement to being in a controlled environment when she was a victim of sexual exploitation but also that she was able to escape from that environment and was able to make telephone contact with a person who led her to the cannabis cultivation in the UK. It was submitted these are not the same people.
32. Mr Bates submitted there are different methods which the appellant refers in to in her statement of January 2016, in that she went to a hotel to meet the person who offered her a job which it was submitted does not suggest she was under the control of the person mentioned. It was submitted this did not support a claim of a continuous strand of trafficking from Vietnam.
33. In Vietnam it was argued the appellant was a victim of deception not coercion or physical removal and it was not made out that those who arranged her departure from Vietnam were linked to those who trafficked her and exploited her in the United Kingdom.
34. It was argued that due to the passage of time and transfer of property or by other means any debt owed for the appellant’s journey to the United Kingdom would have been repaid. It was submitted the appellant still has a relationship with her family who she claims are unaware of everything that has happened to her; although if the appellant returned it is not known how her family would react if they found out what has occurred, including her children.
35. In relation to the issue of trafficking, Mr Bates submitted that the passage of time was relevant in that the Secretary State does not dispute that Vietnam is a country in relation to which there is a risk of re-trafficking but that now the appellant is aware of what happened in the past it is highly unlikely that in the safety of her family she is likely to face the same risk.
36. Mr Bates referred to the evidence provided by the Secretary of State which is in the following terms:

Witness statement of [LG]

I, [LG], Senior Executive Officer, Country Manager Asia and Middle East team 4 & 5 of Return Logistics, Home Office, 14 Floor Lunar House, Croydon, CR9 2BY will say as follows:

1. I am employed by the Defendant as a Senior Executive Officer, Immigration Enforcement. My title is Country Manager, Asia and Middle East team 4 & 5, in Return Logistics. The facts in this statement are true to the best of my knowledge and belief and are derived from information contained in Home Office files and obtained from Home Office colleagues overseas.
2. I make this statement as the Country Manager in Asia and Middle East team 4 & 5. This is a specialist team within the Home Office that plays a liaison role (sometimes in conjunction with the Foreign and Commonwealth Office) to facilitate the provision of travel documentation through diplomatic engagement with the country of nationality where a person has failed to provide the normal travel and identity documentation required to enter the UK. We also shape and coordinate country focused returns strategies for various countries.
3. I can confirm that a shelter (for victims of trafficking who are returned to Vietnam) has been built in Nghe An Province Vietnam. The shelter was built with funding by the British government has been run and operated by the Vietnamese local authorities (the local authorities is funding the operational cost for the shelter). It has been agreed that the shelter will accept victims returning from the UK.
4. The shelter offers comprehensive consultation services including healthcare and psychology using Vietnamese language.
5. Apart from this shelter only Hagar Vietnam (and international NGOs) has provided support to victims of trafficking who have returned to Vietnam (two to date). Link to Hagar website detailed Hagar services: <https://www.hagarinternational.org/international/hour-work/where-we-work/Vietnam/>
6. The Piece House Hanoi run by Centre for Women Development of Women Union also have comprehensive consultation services. It's Facebook page which is in Vietnamese only (<https://vn.Facebook.com/NgoiNhainhYenPeaceHouseShelter/>) (with only one consultation line in English + 84 24 37281038. Its official website is under reconstruction ngoinhabinhyen.vn
7. Pacific Links Foundation (an international NGOs) in conjunction with local authorities also run two shelters for female victims of trafficking Lao Cai province (North border area of Vietnam) and An Giang province (southern border area of Vietnam), website: <http://www.Pacificlinks.org/>
8. The facts this witness statement are true to the best of my knowledge and belief

Signed: -----

[LG]

Dated: 23.8.17

37. Of more importance is the witness statement of [TT] which is referred to in relation to the preliminary issue point discussed above. This statement is in the following terms:

Witness statement of [TT]

I, [TT], Modern Slavery Project Manager, British Embassy Hanoi, 4th floor Central Building, 31 Hai Ba Trung, Hoan Kiem, Hanoi, Vietnam make this statement (consisting of TWO pages which is signed by me).

1. I am employed by the Defendant as a Locally Engaged Officer of the Immigration Enforcement International, the British Embassy Hanoi. My title is Modern Slavery Project Manager. The facts in this statement are true to the best of my knowledge and belief.
2. I make this statement as the Modern Slavery Project Manager Locally Engaged Officer of the Immigration Enforcement International. This is a specialist team that plays a liaison role (sometimes in conjunction with the Foreign and Commonwealth Office) to facilitate the provision of travel documentation through diplomatic engagement with the country of nationality where a person has failed to provide the normal travel and identity documentation required to enter the UK. We also coordinate all the projects on Modern Slavery funded by the HMG in Vietnam.
3. I can confirm that currently there is no certain agreed mechanism by UK in Vietnam for returning a Modern Slavery (MS) victim recognised by the UK to Vietnam and it requires the involvement of our team in Hanoi in getting approval from local authorities for the return given the diplomatic status of the Embassy in Vietnam. Our team will need advice from experts of Non-Governmental Organisations (NGOs) in Vietnam on how best to support a vulnerable victim who has been diagnosed with Post Traumatic Stress Disorder (PTSD); special psychological services may be needed; shelter for suitable home accommodation; a package of support; reception and travel to shelter/home etc. Steps we would take to liaise with the Vietnamese authorities over their reception upon return and to place the Appellant (if possible) in one of the shelters are as followed:

Step 1: the victim will need to fill in an application with self declaration forms for applying for an emergency travel document (ETD) which the victim will need for travelling to Vietnam. The Asia and Middle East team 4 & 5, in Returns Logistics can provide the application template. The application should be sent to our team by the Asia and Middle East team 4 & 5, in Returns Logistics. The application will then be forwarded to the Immigration Department of Ministry of Public Security of Vietnam for identification verification check.

Step 2: Once the verification is conducted by the Vietnamese authorities and completed, and an ETD is agreed to be issued to the victim, our team will inform the local authorities of the return and obtain the approval for the victim to stay in a shelter in Vietnam. Or if the victim wants to return to the victim's family

and receiving support without staying in the shelter, a NGO will be identified to provide tailored support to the victim.

Step 3: Once approval is obtained, a date of return will be set and reception can be arranged in Vietnam by either local authorities and/or NGO

Step 4: if the victim is entitled to a support package by the British government, our team can help identify a NGO to handle/manage the package for the victim to make sure that the packages used properly.

4. The facts in this witness statement are true to the best of my knowledge and belief.

SIGNED: -----

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[TT]

DATED: 12.10.17

Discussion

38. There are a number of preserved findings recorded in the error of law decision which are summarised at [34] as:

“34. I find no error of law made out in relation to the Judge’s conclusion that VTH is a victim of trafficking for sexual exploitation. I find no error of law made out in the Judges conclusions that VTH suffers from PTSD as a result of her adverse life experiences and subjective fear of the possibility that the same may be repeated.”

39. Although the appellant relies upon a number of learned articles and reports on relevant issues these cases are fact specific with the burden of establish an entitlement ordinarily being upon the appellant.
40. It was argued on the appellant’s behalf that, notwithstanding it being found she is a victim of trafficking, the respondent has not provided the required period of ‘rest and reflection’ to enable identified needs in breach of the ‘Trafficking Convention’. Guidance was to be found in EK (Article 4 ECHR: Anti-Trafficking Convention) Tanzania [2013] UKUT 00313 (IAC)
41. This decision has been delayed as it was known the Court of Appeal have been considering a trafficking case and the respondent’s guidance in relation to a victim of trafficking. Judgment in that matter was handed down in R (on the application of PK (Ghana) v Secretary of State for the Home Department [2018] EWCA Civ 98, on 8 February 2018.
42. It has not been necessary to reconvene in light of this later decision as it is not disputed, as recognised by the Court of Appeal, that the Council of Europe Convention on Action against Trafficking in Human Beings 2005 (CETS No 197) "the Trafficking Convention", does not give a foreign national an automatic right

to remain in a particular country by virtue of being a victim of trafficking alone; but it does require a state to grant such a victim a residence permit where the competent authority in that state considers that that person's stay in the country is necessary owing to his or her personal situation.

43. It is also not disputed that a conclusive decision that the person was trafficked, either following referral through the National Referral Mechanism or subsequent judicial finding, does not automatically lead to a grant of leave to remain. Guidance upon discretionary leave in these circumstances is found in several policy documents issued by the Secretary of State, which are linked and, so far as material, consistent with each other.

44. The respondent's guidance, Asylum Policy Instruction, Discretionary Leave, Version 7, 18 August 2015, in relation to victims of trafficking/modern slavery states:

3.5 Modern Slavery cases (including trafficking) Victims of slavery, servitude and forced and compulsory labour who are conclusively recognised as such by the National Referral Mechanism (NRM) may be eligible for DL based on the same criteria of personal circumstances, helping police with enquires and pursuing compensation as victims of human trafficking, and this provision applies across the UK.

A person will not normally qualify for DL solely because they have been identified as a victim of modern slavery or trafficking – there must be compelling reasons based on their individual circumstances to justify a grant of DL where they do not qualify for other leave such as asylum or humanitarian protection.

As part of the positive reasonable grounds decision letter issued by the Competent Authority of the NRM the potential victim of human trafficking in the UK, and modern slavery in England and Wales, will be asked if they would like to be considered for DL in the event of a positive conclusive grounds decision from the NRM. Where they indicate they would like to be considered for DL this will be considered under the criteria relating to personal circumstances, helping police with enquires and pursuing compensation detailed in the Competent Authority guidance once a positive conclusive grounds decision is issued. The person will not need to fill in an application form or pay a fee for an initial consideration of DL on this basis. A person who has claimed asylum will receive automatic consideration for DL on this basis if they are not granted asylum or humanitarian protection.

45. The Court of Appeal in PK (Ghana) found:

42. However, I cannot accept the proposition that Article 14(1)(a) was intended to (or, construed objectively, does) give the Secretary of State an open-ended discretion.

43. If it were an open-ended discretion, Article 14(1)(a) would be otiose, because the state always has a residual discretion to grant a foreign citizen the right to reside. It is a tenet of construction that words are intended to have some meaning, and a substantive provision should not

be construed in such a way that it is empty. Article 14(1)(a) is clearly not intended to be a provision included for the avoidance of doubt. Indeed, Miss Bretherton did not suggest that was the case. It is intended to have some substantive content. If it is "necessary" (whatever that may mean), then the affected person will have the right to discretionary leave, and thus the right to remain in the United Kingdom, irrespective of his or her immigration status or other rights. Where an individual satisfies the criteria of Article 14(1)(a), he or she is granted a new right by the Convention.

44. "Necessary", in this context, means required to achieve a desired purpose, effect or result. In Article 14(1)(b), the purpose for which it is necessary for a person to stay in the country is express: the competent authority has to consider that the person staying in the country "is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings". In Article 14(1)(a), the purpose is not express: but the provision is deep within the Trafficking Convention which (as Miss Bretherton rightly accepted) must be construed purposively [2]. Thus, "necessary" in Article 14(1)(a) has to be seen through the prism of the objectives of the Convention: and the competent authority has to consider whether the person staying in the country is necessary in the light of, and with a view to achieving, those objectives.
45. In respect of the relevant objectives of the Trafficking Convention, Mr Westgate submitted that Article 12 informs the correct construction of Article 14(1)(a); but, in my view, any assistance Article 12 can give is, at best, minimal and indirect. Article 12 sets out additional obligations imposed upon the state - and, reciprocally, additional rights that attach to the victim of trafficking - at various stages of the process; but it does not purport to prescribe or even inform when those stages arise, as does Article 14.
46. Articles 10(2) and 13(2) (quoted above: see paragraphs 8 and 10) make clear that the rights set out in Article 12(1) and (2) are triggered by a reasonable grounds decision, and are maintained until at least the end of the recovery and reflection period. Article 12(1) concerns steps that a state is required to make "to assist victims in their physical, psychological and social recovery". Recovery is an important form of relief for a trafficked person, involving medical and/or psychological care, and/or legal and/or social services (see *EK (Article 4 ECHR: Anti-Trafficking Convention) Tanzania* [2013] UKUT 313 at [46], and the international documents there referred to). However, Article 13 of the Convention, which deals with recovery, curiously requires the recovery period to be of no less than 30 days - for the United Kingdom, the Secretary of State has determined the period shall be 45 days - and that "such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities" (emphasis added). But, as agreed between Mr Westgate and Miss Bretherton, looking at the Convention as a whole, it seems clear that, if a conclusive decision is made, the state's obligations under Article 12, once arisen, continue,

irrespective of any other rights they might have, unless and until the victim is returned to another state.

47. Similarly, the rights in Article 12(3) and (4) are triggered as soon as the victim is "lawfully resident" in the country, which includes where he or she has been granted discretionary leave. Again, those rights, once arisen, continue, irrespective of any other rights they might have, unless and until the victim is returned to another state.
48. Therefore, it is Article 14(1) which prescribes when a state is required to allow a victim of trafficking lawfully to reside in its national boundaries. I accept, of course, that "personal circumstances" is a wide concept and wide enough to include the consequences of having been trafficked; but there is no additional obligation, outside Article 14, to allow a victim to reside or continue to reside to enable his or her full recovery. Article 12 does not impose such an obligation: it merely prescribes rights that a victim of trafficking has whilst in the country. Indeed, Article 14(3) makes expressly clear that the withdrawal of any residence permit is dependent upon the national law of the relevant Party (and not obligations imposed by international law, such as the Convention itself); and Article 16(2) similarly provides that returns are to be effected simply "with due regard for the rights, safety and dignity of that person". Consequently, I do not consider that Article 12 is of any real assistance in construing Article 14(1)(a).
49. However, Mr Westgate had a more fundamental submission, which in my view is of very much greater force, namely that the Secretary of State's policy guidance documents to which I have referred do not reflect Article 14(1)(a), because they fail to engage with the relevant Convention criteria at all. Indeed, I consider this submission made good.
50. Article 14(1)(a) of the Convention requires the identification of the individual's relevant personal circumstances, and then an assessment by the competent authority of whether, as a result of those circumstances and in pursuance of the objectives of the Convention, it is necessary to allow that person to remain in the United Kingdom. Leaving aside the Convention purposes of facilitating the investigation of criminal proceedings and/or a civil claim by the victim (neither of which apply in the Appellant's case), the only relevant objective of the Convention is the protection and assistance of victims of trafficking. As I have described, this is one of the primary objectives of the Convention, as expressed in the Preamble and Article 1 (see paragraph 5 above). Whether the Appellant's personal circumstances were such as to make it necessary for him to stay in the United Kingdom could only be assessed by reference to that objective.
51. However, the Secretary of State's guidance is entirely silent as to the purpose for which it must be necessary for the victim to remain. That is understandable if the Secretary of State shares the view set out in Miss Bretherton's submissions that Article 14(1)(a) gives the competent authority an open-ended discretion. However, in my view it is fatal if, as I consider, the provision does not give an open-ended discretion, but rather requires an assessment of whether it is necessary for the purposes

of protection and assistance of the victim of trafficking (or one of the other objectives of the Convention) to allow him to remain in the country. In this case, the Secretary of State's guidance neither requires nor prompts any such engagement. As a result, in my view, it does not reflect the requirements of Article 14(1)(a), and is unlawful.

52. As a second strand of argument, Mr Westgate submitted that, if and insofar as the guidance does engage with the Article 14(1)(a) criteria, it imposes too high a threshold, in that it requires the individual's personal circumstances to be "compelling" or "so compelling" that it is considered that discretionary leave should be granted.
53. I see the force in this criticism too, although in my view this argument is in substance another manifestation of the failure of the guidance to engage with the purposes of the Convention.
54. Like "necessary", something cannot be "compelling" in this context without reference, express or implied, to the object it tends to pursue. Even if the Secretary of State's policy guidance identified that object – which, as I have indicated, it singularly fails to do – and even though "compelling" does not necessarily have the etymological implication of a particularly high threshold, it is often used in the legal sense to convey that the relevant threshold is high, and will be only exceptionally and rarely met. For example, the threshold for treatment being "inhuman or degrading" for the purposes of Article 3 of the ECHR is notoriously high. In medical cases – where it is said that removal of an individual from the United Kingdom to another country would result in a breach of Article 3 of the ECHR because medical facilities that he needs are not available in that country – it is said that, to avoid removal, that person must show that the circumstances are "very exceptional". The test, derived from European authorities, was set out by Lord Hope of Craighead in *N v Secretary of State for the Home Department* [2005] UKHL 31; [2005] 2 AC 296 at [50], as follows:

"... For the circumstances to be ... 'very exceptional' it would need to be shown that the applicant's medical condition had reached such a critical stage that there were compelling humanitarian grounds for not removing him to a place which lacked the medical and social services which he would need to prevent acute suffering while he is dying..."

To similar effect, see also [69]-[70] per Baroness Hale of Richmond and [94] per Lord Brown of Eaton-under-Heywood. Thus, "compelling" has a particular connotation in the immigration context, involving a particularly high threshold.

55. Miss Bretherton's submission that that was not intended to be the connotation in the policy guidance documents here (e.g. in paragraph 2.4 of the API, quoted at paragraph 18 above) is fraught with difficulty. The construction of the policy is a matter of law, based upon an objective consideration of the words used and their context. The context of paragraph 2.4 of the API includes the fact that in paragraph 2.1, on the opposite page to paragraph 2.4, in respect of medical cases, after a reference to N, it is said:

"To meet the very high Article 3 threshold an applicant will need to show exceptional circumstances that prevent return, namely that there are compelling human considerations, such as the applicant being in the final stages of terminal illness without the prospect of medical care or family support on return."

That directly equates "compelling" with the high threshold inherent in "exceptional circumstances".

56. Anyone, including a decision-maker, reading paragraphs 2.1 and 2.4 could (and, in my view, probably would) proceed on the basis that the same high threshold applies in trafficking cases. That impression is fortified by the general impression given by the policy guidance that trafficking cases are to be treated in the same as any other application for discretionary leave to remain. For example, the CAG indicates that, if discretionary leave had already been considered with an asylum claim, then it is unnecessary to consider it in the context of Article 14(1)(a) of the Trafficking Convention (see paragraph 18 above). However, as I have described, the Convention is intended to give victims of trafficking particular protection and assistance; and Article 14(1)(a) merely requires consideration of whether it is necessary for the victim to remain in a country because of his or her personal circumstances, without the higher threshold implicit in the word "compelling".
57. Consequently, even if a decision-maker were to grasp that Article 14(1)(a) of the Convention requires consideration of whether it was necessary for a person to remain in the United Kingdom has to be assessed by reference to the objectives of the Trafficking Convention, there is a real – indeed, in my view, a very substantial – risk that, on the basis of the policy guidance, he would apply a threshold different from and higher than that required by the Convention.
58. Finally, I should deal with two discrete points relied upon by Picken J (see paragraph 36 above)
59. First, he suggested that the fact that the criterion in Article 14(1)(a) is in terms of whether the competent authority "considers" that the victim's stay is necessary is of some significance. However, in my view, the word does not support the Secretary of State's contention that a discretion is left to each state to decide the criteria that should be applied. Rather, as Mr Westgate submitted, it simply means that the competent authority has to make an assessment of whether the criteria are met in a given case. It does not bear upon the scope of those criteria, which are laid down in the Convention itself and are not a matter for the states who are parties to it.
60. Second, contrary to the judge's view, I am unconvinced that paragraph 183 of the Explanatory Report gives any support to the construction which he favoured. That paragraph refers to a person's personal circumstances being "such that it would be unreasonable to compel them to leave the national territory"; but "compel" there is used in a very different sense from that in which it is used in the Secretary of State's policy guidance, i.e. as a verb meaning to require. The word is also used in a different context, where it is envisaged that a person will be

removed from the United Kingdom, whereas, in the present context, the issue is whether it is necessary that a person should be permitted to stay here.

Conclusion

61. For those reasons, I consider that the Secretary of State's policy guidance documents fail properly to reflect the obligation imposed upon the United Kingdom in Article 14(1)(a) of the Trafficking Convention.
 62. I would consequently allow the appeal. Subject to the further submissions of the parties on the terms of the order, I would quash the order of Picken J, make a declaration that the relevant policy guidance is unlawful, and quash the Secretary of State's decisions of 10 October 2013 and 16 January 2015.
46. The finding by the Court of Appeal can be summarised as reading that the guidance issued by the Secretary of State, stating that it might be appropriate to grant discretionary leave to a trafficking victim if their personal circumstances were "compelling", was unlawful. It did not properly reflect the European Convention on Action against Trafficking in Human Beings 2005 art.14(1)(a), which required a competent authority to grant a residence permit to a trafficking victim if it considered that their stay was "necessary" owing to their personal situation. Article 14(1)(a) was not intended to give the Secretary of State an open-ended discretion.
 47. Article 14(1)(a) of the Convention requires the identification of the individual's relevant personal circumstances, and then an assessment by the competent authority of whether, as a result of those circumstances and in pursuance of the objectives of the Convention, it is necessary to allow that person to remain in the United Kingdom.
 48. There is therefore an overlap between a number of factors in this appeal. The starting point has to be whether the appellant, in light of her circumstances as known in pursuance of the objectives of the Convention, should be permitted to remain in the United Kingdom as a victim of trafficking.
 49. The appellant's needs are set out in the substantial evidence provided by the appellant's representatives in this appeal. It is a preserved finding that the appellant, as a result of her previous experiences as a victim of trafficking, has acute needs.
 50. The respondent in the refusal considered the psychological report of Dr Kemmis dated 7 September 2015. In that it was acknowledged the appellant was stated to fulfil the criteria for both PTSD and Major Depressive Disorder and that the appellant had suffered the same for some time. It is also noted in that report that the appellant had recounted a history of domestic violence from her husband in Vietnam.

51. As there was no acceptance by the respondent that the appellant had been trafficked at that time there was no consideration of the respondent's obligations under the Convention. That position has now changed as a result of the finding by the First-tier Tribunal that the appellant is a victim of trafficking/Modern Slavery. The evidence available is far more extensive than that before the decision-maker. In the report of Dr Chisholm dated 28 October 2007 the section relating to the appellant's current psychological difficulties reads as follows:

Current psychological difficulties

52. Assessment confirmed the same symptoms reported by the other clinicians who previously assessed her. I am confident that she meets criteria for *PTSD with Prominent Dissociative Symptoms* in addition to *Major Depressive Disorder* (AKA "depression" See Appendix).
53. I had difficulty in ascertaining a more precise understanding of the content of her flashbacks. Her replies lacked detail, but not in the manner of someone deliberately not answering the question, but in a manner of a person struggling to make sense of what happened.
54. When people have severe PTSD, as [Ms H] does, it is difficult for them to report the content of the flashbacks, since doing so risks triggering a flashback. In addition, since a flashback is a type of memory that feels current and sensory, rather than one that can be expressed verbally, it can be almost impossible for a person to describe it in a way that can be understood. Based on her reactions and avoidance symptoms, it is most likely that her most prominent dissociative flashbacks were of an acid attack in France. Her nightmares were about being chased or attacked, somatic of her reported experiences, rather than a directory creation of them, in so far as she could report and describes them.
55. [Ms H] has recurring feelings of being detached from one's mental processes or body, as if one is observing them from the outside or in a dream. She experiences both derealisation and depersonalisation. These are dissociative symptoms, which are unusual, but form part of a subtype of PTSD.
56. In addition to these they were several comprehension difficulties. She perseverated, stating the same thing over and over. In my opinion it is very possible, but I cannot confirm, that she also has a mild to learning disability. This further impedes her ability to describe the content of her symptoms.
57. Although she has a cognitive impairment, it is possible it is not due to a learning disability and may not have been present since birth. She is able to read and write Vietnamese. She showed me a letter that she wrote. Unfortunately, the interpreter was unable to read or write Vietnamese, so I could not have gain any insight by a translation from anyone other than her. [Ms H] told me that the letter was about how sad she was.
58. She was able to provide a more easily understandable answered questions not related to PTSD or traumatic events, although even these were sometimes slightly off topic.
59. As with Dr Whittaker-Howe's medicolegal report, I considered the possibility that she was malingering, feigning or exaggerating my assessment included a number of methods designed to detect this. I agree with Dr Whittaker-Howe

that she would have required an expert level of knowledge and acting skills in order to have faked her symptoms. I'm confident that she was not malingering.

60. I agree with the other clinicians that her PTSD is severe. She does not appear to have improved or significantly declined since the last assessment a year earlier. There may be some declining mood, caused by the reduction of social interaction compared with when she lived in Liverpool during the last assessment. [Ms H] has much less opportunity to see anyone else or undertake activity compared with the year ago.

52. In relation to treatment Dr Chisholm writes:

Recommended treatment

61. I agree with Dr Kemmis and Dr Whittaker-Howe that [Ms H] require specialist evidence-based psychological therapy for PTSD and someone experienced and adept with working with the association.
 62. In my experience of this, such therapy would be required thirty - fifty sessions, far more than the average twelve for single event PTSD without complications.
 63. However, in advance of this, she urgently requires social support. A support worker who encouraged her to leave her room, got her engaged in activities that she can do would bring significant benefits to her psychological well-being. She cannot concentrate at college, and gains very little from it except a sense of failing, worsening her mood. Becoming engaged with social activities, that provide practical skills such as art or gardening or cooking, with other people would be of enormous benefit to her mood, feeling of safety and association-based symptoms. At the moment, she is in a community that she is fearful to go out in, living in a house that is drab and dark, with little opportunity to communicate to anyone even on a social level. She lacks the capacity to do this alone. At present, she will not even go for a short walk by herself.
 64. She should be assessed for an antidepressant medication such as Mirtazapine, which in my clinical experience, can help to reduce the impact of nightmares.
 65. She may require additional support if she does have a learning disability, although I think she can live independently.
 66. In my opinion, if she continues to be as isolated as she is, her low mood will worsen and she may therefore be at risk of suicide. However, her PTSD is very severe, and it cannot worsen very much before her symptoms hit ceiling level.
53. There is arguable merit in the submission by Mr Bates that the appellants claim to be in fear of her family and to be ostracised by them yet, at the same time, to maintain contact with them, is contradictory. It is not disputed that the appellant has maintained contact with her family and that there are family members in Vietnam. The appellant has not made out on the basis of the information she states the family are currently aware of, that she would not be able to return to her family. The question of whether there is a sufficiency of protection if those who

trafficked her seek to re-traffic her is considered further below. It is also the case that the appellant claims her family do not know she was trafficked to the United Kingdom for prostitution and that if they became aware she would be ostracised by them.

54. The appellant's case is that she cannot return to her family. If that is taken as her position. The option that needs to be considered is whether there is a place to which she can return where she can receive the support that it is required away from the family. In this respect Mr Bates submits that the material available from the Secretary of State, set out in the witness statements above, shows that adequate facilities are available.
55. Mr Sidle refers to Vietnam as a Tier 2 country, a term defined above. It is accepted that services provided by the authorities in Vietnam in isolation have in the past been insufficient hence the action taken by the United Kingdom government in funding the construction of the shelter in question.
56. In relation to return it is also important to note that the appellant was said to have claimed asylum in Germany but did not pursue the same, had pleaded guilty to criminal proceedings which the appellant claimed she did so she could return to Vietnam more quickly, which appears inconsistent with the case now, and requested on 15 May 2015 to be removed to Vietnam under the Facilitated Returns Scheme which Mr Justice Dingemans in refusing permission to bring judicial review at the High Court on 7 August 2015, also found inconsistent with her case.
57. The respondent's reasons for refusal letter notes the Vietnamese authorities accepted the appellant is a Vietnamese national and agreed to issue her with an Emergency Travel Document on 13 March 2015. This shows Step1 of the three-stage process identified in the witness statement of Tram Troung has already been completed.
58. Step 2 provides that once the ETD is agreed to be issued to the victim, the respondent informs the local authorities of the return and obtains the approval for the victim to stay in a shelter in Vietnam. Or if the victim wants to return to the victim's family and receiving support without staying in the shelter, a NGO will be identified to provide tailored support to the victim. The submission by Miss Warren that there is no evidence the appellant will be able to access a shelter is noted but not made out. At this point the appellant will make a choice. If she maintains her position that she does not want to return to her family the respondents staff will obtain the required approval for her to enter a shelter. This ensures the appellant is not returned without accommodation and support.
59. In relation to Step 4, the appellants needs have been identified in the appeal bundle in relation to her personal presentation and impact upon her of her experiences in the UK. It was not argued by Mr Bates that the appellant will not be entitled to assistance from the British government which should be put in place at a local level to assist with her PTSD and other needs. This is not a case in which

the appellant will be expected to seek such a resource herself as [TT] specifically confirms that the team of which he is member can help identify a NGO to handle/manage the package for the victim to make sure that the package is used properly. It was not made out by the appellant that no such assistance is available and even if to a lesser standard by that available in the UK it has not been made out that the same will not meet the appellants needs or give rise to a breach of Article 3 ECHR. Treatment is available in the UK to assist the appellant pending removal.

60. It is not made out the appellant was trafficked to the UK directly. Historically the appellant was travelled to another European country which she left and came to the UK and once in the UK became a victim of modern slavery.
61. It is not made out that the respondent is obliged to grant a period of leave to the appellant to enable her benefit from a period of reflection, on the facts of this case, at this time. The need to do so has not been arguably made out.
62. In relation the case law of the Upper Tribunal, in Nguyen (Anti-Trafficking Convention: respondent's duties) [2015] UKUT 170 (IAC) (Promulgated 25 March 2015) (Heard on 19 September 2013 & 15 December 2014), the Upper Tribunal held that 'as Vietnam is a large country with a population of some 90 million people and a number of large cities in it, a victim of trafficking would be able to return without being of adverse interest to the government, and the chance of the person coming across their traffickers is very slight.' (Paragraph 51) 'The person is more likely to be at risk of serious harm if they still have an outstanding debt to the traffickers. The Upper Tribunal also held that there was no evidence to suggest that a lone woman, returning without her family, faced a real risk of being re-trafficked.' (Paragraph 52) While a person is, in general, not likely to be at risk of reprisal or being re-trafficked by their original traffickers, each case will need to be considered on its merits. The onus is on the person to demonstrate that their profile and circumstances are such that on return they would be too vulnerable to abuse or re-trafficking which would amount to serious harm.
63. Factors that will indicate an increased risk of being abused or re-trafficked include, but are not limited to:
 - The person having an outstanding debt to the traffickers.
 - The absence of a supportive family willing to take the victim back into the family unit;
 - The person having no other support network to assist them; no or little education or vocational skills; mental health conditions, which may well have been caused by experiences of abuse when originally trafficked; material and financial deprivation such as to mean that they will be living in poverty or in conditions of destitution.
64. Factors that indicate a lower risk of being of being abused or re-trafficked include, but are not limited to:
 - The availability of a supportive family willing to take the person back into the family unit;
 - The fact that the person has acquired skills and experiences since leaving Vietnam that better equip them to have access to a livelihood on return to Vietnam thus enabling them to provide for themselves.

65. As stated, it appears the appellant is in contact with her family but claims she cannot return to live with them, even though she claims they have no knowledge of what has occurred in the UK. The appellants expert Mr Mark Sidel refers to the existence of family in Vietnam and the family borrowing £20,000 (or another claimed figure) to send the appellant abroad which is evidence of a willingness to support in the past
66. The appellant claims to be in debt bondage but the debt once due is secured on the family home and there is insufficient evidence of the family being illtreated, threatened or killed as result of a debt not being paid. The appellants claim to have such a debt remaining at this time is not made out. In any event, the appellant claims she will not return with her family and so the agents are not likely to know where she is as she can be placed by the shelter staff in suitable accommodation with assistance in health, training, and employment, to enable her to re-integrate. This not a case of a person who cannot function but a person who has the ability to survive on her own, according to her own expert evidence.
67. In relation to the available protection, if required, and whilst it is accepted concerns arise in certain quarters and that corruption can be an issue, in Nguyen (Anti-Trafficking Convention: respondent's duties) [2015] UKUT 170 (IAC), the Upper Tribunal endorsed the view that there is, in general, a sufficiency of protection provided by the authorities in Vietnam (paragraph 52) and that general effective state protection is likely to be available. It is accepted this is a fact sensitive issue but the onus is on the appellant to demonstrate why she would not be able to seek and obtain effective state protection which the appellant has failed to make out on the evidence.
68. It is accepted that women, and especially single women with no support networks, may be particularly vulnerable and subject to destitution though this may be mitigated by the existence of shelters and assistance available from both government and civil society organisations which the respondent has shown is available. The appellant has failed to make out that she faces a real risk of destitution and resultant vulnerability that gives rise to an entitlement to a grant of international protection.
69. It is not made out the appellant will be returned without support sufficient to assist her in meeting her stated needs, provided she engages with the same. It is not made out the appellant will not have the benefit of an effective sufficiency of protection. It has not been made out that it is not reasonable for the appellant to internally relocate to a shelter.
70. It has not been made out that the appellant faces a credible real risk of being trafficked from Vietnam such as to entitle her to be recognised as a refugee or any other form of protection or that her removal will breach any of the UKs obligations under ECHR. The Trafficking Protocol provides that when returning a victim of trafficking to the state where the victim is a national or has a right of permanent residence, the sending state shall maintain "due regard for the safety of that

person. The methodology for return set out in the respondent's evidence shows such concerns can be addressed.

- 71. Accepting that the prospect is subjectively frightening for the appellant any such risk has not been objectively made out to the required degree. As noted above the fact person has been trafficked does not entitle them to a grant of international protections per se. The fact the appellant may have to register with the authorities does not establish a real risk for her former traffickers per se. If it was found this was so it would be speculation on the facts and no more.

Decision

- 72. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

- 73. The anonymity order shall continue pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Judge of the Upper Tribunal Hanson

Dated the 7 March 2018