



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-002281
First-tier Tribunal No:
PA/52459/2022
IA/06336/2022**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 19 October 2023**

Before

**UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE SILLS**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**EAV
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Ms Susana Cunha, a Senior Home Office Presenting Officer
For the Respondent: Ms Leonie Hirst, Counsel instructed by Birnberg Peirce Ltd

Heard at Field House on 31 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the claimant is granted anonymity. The claimant will be referred to in these proceedings as E A V.

No-one shall publish or reveal any information, including the name or address of the claimant, likely to lead members of the public to identify the claimant.

Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals, with permission, against the First-tier Tribunal decision of 23 May 2023 allowing the claimant's appeal against her decision on 22

June 2022 to refuse to grant the claimant international protection or leave to remain on human rights grounds. The claimant is a citizen of the Philippines.

Factual Background

2. The claimant was born in 1988 and is 35 years old now. In February 2014, when she was 26, she travelled to Saudi Arabia as a domestic worker for a Saudi family. She obtained the post through an employment agency. From 31 August 2016-28 October 2016, she accompanied her employers on a holiday visit to the UK. She returned again to the UK with her employer on 22 July 2017, and left her employment. On 15 November 2017, a referral was made to the Competent Authority to consider whether the claimant was a trafficked person. On 21 November 2017, a positive Reasonable Grounds decision was made.
3. In her refusal letter, the Secretary of State accepted that an individual trafficked from the Philippines is a member of a particular social group and that the claimant had provided a credible account of her circumstances. However, the Secretary of State did not accept that the claimant would be at risk of persecution if returned now. If the claimant sought work abroad again, this would be a matter of choice. She would have the support of family in the Philippines. The claimant appealed to the First-tier Tribunal.
4. The Judge attached weight to the two expert reports, a country report from Professor John Sidel, who holds the Sir Patrick Gillam chair in International and Comparative Politics at the London School of Economics, and a psychology report from Dr Sarah Heke HCPC, DClinPsy, BA(Hons), a consultant clinical psychologist.
5. At para 15 the Judge distinguished between the position of the claimant and her sister, on the basis that the sister is single. At para 16 the Judge found that the claimant would not likely leave her family and daughter to work abroad again, unless there were no alternatives in the Philippines. At para 18 the Judge found it not likely that the claimant would be targeted in the Philippines, so the question of relocation or sufficiency of protection was not the issue. The risk arose out of economic necessity. Due to low pay in the Philippines, there was a real possibility that the claimant would consider working abroad again, and that there might be a repetition of past experiences. At para 19 the Judge considered the best interests of the claimant's daughter. At para 20 the Judge found a real risk of the claimant being re-trafficked out of economic necessity if returned.
6. The First-tier Tribunal allowed the appeal on asylum grounds, but made no decision on the Article 8 human rights grounds raised by the claimant. The Judge made clear that the appeal would not succeed on medical grounds. The Secretary of State appealed to the Upper Tribunal.

Permission to appeal

7. The Secretary of State raised three grounds, the first and third of which raise different aspects of the same point:
 - (1) Grounds 1 and 3 dispute the Judge's conclusion that the claimant was at real risk of being trafficked again due to economic necessity. The Judge had found that there was no real risk of the claimant being persecuted or targeted in the Philippines on return, and there was no reason to assume that she would be forced to work abroad. As the claimant would not be targeted, and would not be forced to work abroad, she was not entitled to protection under the

Refugee Convention. It was for the claimant to decide whether or not to seek employment outside the Philippines, or remain in the Philippines where pay may be lower. It was not clear why the claimant's single sister was in a better position than the claimant. The claimant's poor financial status did not meet any definition which would require the intervention by the UK government on an asylum basis.

- (2) Ground 2 challenged the Judge's approach to the best interests of the claimant's daughter was flawed: it was speculative to proceed on the basis that the claimant would apply for her daughter to join her in the UK, since she had been left in the care of her father during the claimant's previous absence in Saudi Arabia.
8. First-tier Judge Chohan granted permission on 26 June 2023 on the basis that it was not clear on what basis economic necessity fell under the Refugee Convention.

Rule 24 Reply

9. The claimant filed a Rule 24 Reply, relying on the country report of Professor Sidel, which stated that the claimant would be at real risk if returned to the Philippines because she would be returning to the same socio-economic circumstances, trafficking for Filipina domestic servants was common, and Filipina servants in the Middle East were extremely vulnerable to ill-treatment and abuse. The Judge's conclusions at para 18 did not disclose any material error of law.
10. The Respondent had accepted that victims of trafficking were a particular social group. The question for the Tribunal was whether there was a real risk that the claimant would again be subject to abuse and exploitation as a result of being forced to seek work abroad. The evidence showed that it would be likely that the claimant would be driven to seek work abroad where there was a real risk that she would be persecuted. The Tribunal was entitled to find as it did.

The Hearing

11. We heard submissions from the representatives in line with the grounds and Rule 24 response. The submissions are a matter of record and it is not necessary to set them out here.

12. We reserved our decision, which we now give.

Post-Hearing Directions and Abandonment

13. At the hearing, Ms Hirst drew our attention to the fact that the claimant had been granted leave to remain as a domestic worker on 31 August 2022 valid until 30 August 2024. The claimant lodged her appeal on 29 June 2022, and so the appeal was pending when the domestic worker leave was granted. That meant that there was an issue as to the extent to which the appeal had been abandoned. This issue had not been raised at the hearing.

14. Section 104 of the Nationality, Immigration and Asylum Act 2002 states:

"104 ... (4A) An appeal under section 82(1) brought by a person while [she] is in the United Kingdom shall be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom (subject to subsection (4B)).

(4B) Subsection (4A) shall not apply to an appeal in so far as it is brought on a ground specified in section 84(1)(a) or (b) or 84(3) (asylum or humanitarian protection) where the appellant- ... (b) gives notice, in accordance with Tribunal Procedure Rules, that [she] wishes to pursue the appeal in so far as it is brought on that ground."

15. This appeal has been brought under s82(1). The human rights element of the claim falls to be treated as abandoned. The international protection element of the claim can only survive if the claimant has given notice of intention to pursue the appeal, pursuant to section 104(4B)(b) and in accordance with the Tribunal Procedure Rules.

16. On 25 September 2023 we issued directions to the claimant to clarify whether a section 104 Notice had been given. In the light of the claimant's response, we are satisfied that section 104(4B)(b) notice was given and that we remain seised of the asylum element of this appeal.

Error of Law

Ground 2

17. We deal with Ground 2 first. The best interests of the claimant's child, who lives in the Philippines with her father, are irrelevant to the question of whether the claimant was entitled to refugee status in the UK and so the Judge erred in considering this. That said, we also agree with Ms Hirst that the Judge's consideration of this issue did not play a material role in his assessment of the claimant's entitlement to refugee status. So, while this was an error, it was not a material one.

Grounds 1 and 3

18. We are satisfied that grounds one and three identify material errors of law. The First-tier Tribunal failed to identify a relevant risk of persecution in the country of origin, indeed, at paragraph 18 the Judge held that the claimant would not be targeted by any individual in the Philippines. The claimed fear of persecution would only occur if the claimant made a choice to seek work abroad again.

19. The Judge at paragraph 18 refers to the risk to the claimant arising out of 'economic necessity', recognising that on the evidence the claimant might only be able to obtain low paid employment in the Philippines and so choose to seek work abroad. That is not sufficient to bring the claimant within the Refugee Convention definition. Before the First-tier Tribunal, the claimant did not seek to argue that the economic circumstances in the Philippines in themselves would amount to persecution or a breach any of the claimant's ECHR rights. The Judge failed to identify a risk of persecution that the Claimant would face in the Philippines.

20. The Judge's conclusion that the claimant had a well-founded fear of persecution on return to the Philippines was therefore inadequately reasoned and irrational.

21. The decision of the First-tier Tribunal contains a material error of law and so we set it aside.

22. The material facts are not in dispute and no further fact finding is required. Neither party sought to rely on additional evidence.

23. We consider that we can remake the decision without the need for a further hearing in either the Upper Tribunal or First-tier Tribunal.

Re-making the Decision

24. We have considered the factual matrix in this appeal, which is not contentious. We have had regard to the reports of Professor Sidel and Dr Heke. This claimant previously suffered ill-treatment amounting to persecution while working abroad as a domestic worker for a family from Saudi Arabia. If she returns to the Philippines, due to poor economic circumstances, she might decide to work abroad again, because such work is better paid than the work she would find in the Philippines. If the claimant chose to work as a domestic worker in the Middle East, she would face a real risk of suffering the same treatment that she previously suffered.

25. While it is reasonably likely that the claimant would only be able to obtain low paid employment in the Philippines, we do not consider that this, or difficult economic circumstances, are capable of amounting to persecution within the Refugee Convention meaning, entitling the claimant to international protection. If an individual decides to leave their country of origin of their own free will and pursue economic opportunity abroad, they are not entitled to the protection of the Refugee Convention for any risks they would face outside their country of origin in doing so.

26. We conclude that the claimant does not have a well-founded fear of persecution on return to the Philippines. The asylum element of her international protection claim cannot succeed, and the human rights element had already been abandoned.

27. Accordingly, this appeal falls to be dismissed.

Decision

The decision of the First-tier Tribunal involved the making of a material error of law and is set aside.

We remake the decision and dismiss the appeal

Daniel Sills

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 October 2023