



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

Appeal Number: PA/08565/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
on 5 March 2018**

**Decision & Reasons Promulgation
on 8 March 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

DAT [N]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Knox, of Katani & Co, Solicitors

For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge J C Grant-Hutchison, promulgated on 19 October 2017.
2. The grounds refer to *MS (Trafficking - Tribunal's Powers - Art. 4 ECHR) Pakistan [2016] UKUT 00226 (IAC)*, which is headnoted thus:
 - (i) *Having regard to the decision of the ECtHR in Rantsev v Cyprus and Russia [2010] 51 EHRR 1, Article 4 ECHR, which*

outlaws slavery, servitude and forced or compulsory labour, encompasses also human trafficking.

- (ii) Trafficking decisions are not immigration decisions within the compass of the 2002 Act, with the result that judicial review provides the appropriate mechanism for direct challenge.*
- (iii) Tribunals must take into account, where relevant, a decision that an appellant has been a victim of trafficking.*
- (iv) Where satisfied that a negative trafficking decision is perverse, Tribunals are empowered to make their own decision on whether an appellant was a victim of trafficking.*
- (v) Tribunals are also empowered to review a trafficking decision on the ground that it has been reached in breach of the Secretary of State's policy guidance.*
- (vi) While, in principle it seems that other public law misdemeanours can also be considered by Tribunals, this issue does not arise for determination in the present appeal.*
- (vii) Tribunals may well be better equipped than the Competent Authority to make pertinent findings relating to trafficking.*
- (viii) The procedural obligations inherent in Article 4 ECHR are linked to those enshrined in the Trafficking Convention, Articles 10(2) and 18 in particular.*
- (ix) Any attempt to remove a trafficking victim from the United Kingdom in circumstances where the said procedural obligations have not been discharged will normally be unlawful.*

3. The grounds say that the judge erred at paragraph 12 by refusing to entertain any assessment of whether the appellant has been a victim of human trafficking or forced exploitation for commercial gain, which was the entire basis of the appellant's claim.
4. Mr Knox accepted that the judge's reminder to herself at paragraph 12 that the NRM decision was not one against which there is a right of appeal to the FtT is correct, and that it is followed by a self-direction that it was for the appellant to establish his human rights case to the lower standard of proof. However, he submitted that in effect she had treated the NRM decision as unassailable, but went on to make irreconcilable statements.
5. At paragraph 13 the judge said, "By the appellant's own account he was never trafficked in any shape or form when he lived in Vietnam". However, his evidence recorded at paragraph 14 was an account of being duped into trafficking.

6. At paragraph 20 the judge evaluated the risk of re-trafficking, and whether the appellant would fall again for a ruse, apparently accepting that he was trafficked in the first place.
7. Mr Knox submitted that the judge was unclear about her jurisdictional starting point, and from there fell into making unclear and inconsistent findings.
8. Mr Diwyncz said that the decision, uncharacteristically, was as described by Mr Knox. He observed that the judge would not have been helped by the fact that no presenting officer had appeared to put the SSHD's case on the status of the NRM decision and the approach to be adopted.
9. At the next hearing in the FtT, parties must clarify their positions on how the NRM decision regarding this appellant should impact upon the FtT's fact-finding process; the extent of their factual dispute; and where there is a contest, exactly what findings of fact the FtT is invited to make.
10. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.
11. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.
12. The member(s) of the FtT chosen to consider the case are not to include Judge J C Grant-Hutchison.
13. No anonymity direction has been requested or made.



6 March 2018
Upper Tribunal Judge Macleman