



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

Appeal Number: UI-2023-002652
PA/52457/2022

THE IMMIGRATION ACTS

**Heard at Field House
On 8 September 2023**

**Decision & Reasons
Promulgated**

25th September 2023

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL McCarthy

Between

**NTA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Spencer, instructed by Coram Children's Legal Centre

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

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of his family is granted anonymity because this is a protection appeal.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or any member of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals, with permission granted by First-tier Tribunal Judge Chowdhury, against the decision of First-tier Tribunal Judge Harrington (the judge) that was promulgated on 16/04/2023.

Procedural matters

2. The appellant was not present at the hearing and Mr Spencer confirmed he was content to proceed in her absence.
3. The Upper Tribunal makes an anonymity order to give effect to and continue the one made in the First-tier Tribunal.
4. At the request of Mr Spencer, and as there was no objection, I excluded those not directly involved in this appeal from the hearing room to maintain the anonymity order.
5. During the hearing, Mr Spencer confirmed that he was not seeking to rely on the unreported First-tier Tribunal decision as requested in paragraph 16 of the grounds of application and I have not dealt with that request.

The appellant's case

6. Three grounds of application have been provided.
7. The first ground alleges that the finding that the appellant has already been a victim of trafficking or modern slavery and therefore inherently faces a real risk of such treatment being repeated, is inconsistent with the conclusion that the appellant does not face a real risk of persecution or ill-treatment contrary to Article 3 of the human rights convention on return. Either this is a legal error for failing to apply the law, for failing to provide adequate reasons, or because the finding is perverse.
8. The second ground alleges that the judge erred in concluding that victims of trafficking do not form a particular social group (PSG) in the Philippines. The judge says she was not referred to any background information to confirm such victims could be regarded as a PSG in the Philippines, but this ignores the evidence from Professor Sidel. As a result, the judge erred in finding the appellant did not have a refugee convention reason.
9. The third ground alleges that judge erred in assessing that the appellant has sufficiency of protection from state authorities by giving weight to irrelevant factors. Again, this ground also alleges that the judge failed to have adequate regard to the evidence from Dr Sidel.
10. Mr Spencer expanded on these grounds in his skeleton argument of 6 September 2023 and in his submissions at the hearing. He confirmed that his strongest arguments related to the first ground of appeal, and therefore he focused on that element.

11. In summary, Mr Spencer argues that the judge should have recognised that the appellant was a refugee because she faced a real risk of serious harm as a member of a particular social group in the Philippines. He submits that the judge erred in assessing the risk of serious harm facing the appellant in the Philippines as well as on failing to identify victims of trafficking as a particular social group in that country. In the alternative, should the appellant not be a member of a particular social group and therefore not a refugee, she would still face a real risk of serious harm in the Philippines contrary to Article 3 of the human rights convention, and therefore would be entitled to humanitarian protection. In both contexts, the judge failed to adequately consider whether there was sufficient protection in the Philippines for the appellant to reduce the risk of serious harm to an appropriate level.
12. Mr Spencer also submits that as the issues in the appeal related to an assessment of future risk, the findings made by the judge could not be characterised as being a pure question of fact and therefore Court of Appeal's judgment in **Volpi v Volpi** [2022] EWCA Civ 464, [2022] 4 WLR 48 is not applicable.

The respondent's case

13. The Rule 24 response of 25 July 2023 is brief and somewhat generic such that it does not assist.
14. Mr Melvin provided a skeleton argument dated 7 September 2023. After setting out a chronology and confirming the respondent does not seek to disturb the Article 8 findings made by the judge, Mr Melvin responds to each ground of appeal. In essence, he argues that the first ground is misconceived because it is in essence mere disagreements with the findings made by the judge. Similarly, he argues that the second ground is merely an attempt to reargue a point on which the judge had made adequate findings in an attempt to get a different conclusion on the same facts. As to the third ground, Mr Melvin argues is an attempt to raise matters that could have been raised before the judge but were not.
15. In support of each of his arguments, Mr Melvin relies on the Court of Appeal's judgment in **Volpi v Volpi**.
16. In oral submissions, Mr Melvin amplified his skeleton arguments with examples taken from the judge's decision.

Discussion

17. Nothing I say below affects the findings and conclusions reached about the appellant's private life rights. I add that the fact the appellant has succeeded on this element of her original claim does not weaken my approach to the issues raised in her grounds.
18. I do not agree with Mr Melvin that the grounds are mere disagreement with the findings and conclusions reached by the judge because as Mr

Spencer explained, the underlying issue is whether the judge correctly applied the relevant legal principles to the issues, which is in effect an allegation that there are insufficient reasons given to understand the judge's decision-making process.

19. Although the arguments presented by the parties are detailed and lengthy, in essence I am asked to assess the following two points. All other matters flow from one or both of these issues.
 - (a) Whether the judge's findings and conclusions about the appellant's risks on return to the Philippines are sustainable, and, if so
 - (b) Whether the judges' findings and conclusions about victims of trafficking not being a PSG in the Philippines are sustainable.
20. The judge's analysis of the appellant's risk on return to the Philippines begins at paragraph 35 of the decision. The judge reasons as follows.
21. The appellant's former trafficker continues to put pressure on the appellant to repay the debt. Although that pressure is present, it is not so pressing as to be coercive because the trafficker is aware that the appellant's family are poor and that it will take considerable time to repay the debt. The former trafficker will know that the best prospect of being repaid is to encourage, perhaps repeatedly, the appellant to work overseas.
22. The appellant's former trafficker does not habitually behave violently. The appellant does not allege that the former trafficker had a reputation for violence. The appellant does not allege that her mother and wider family have been subject to any physical violence to encourage repayment. The debt would not be repaid at all if the appellant or her family were killed or seriously attacked and therefore it would not be in the interests of the former trafficker to resort to violence.
23. The appellant would have access to adequate protection in the Philippines given the evidence in the background information from both parties that the government is acting against people traffickers and in establishing a support network for victims. The judge concludes that whilst not perfect, the country information shows there is sufficient protection and thereby the risk of serious harm is mitigated.
24. To answer the first issue, I am satisfied the judge correctly analysed the evidence and arguments, and that she applied the relevant legal principles, to reach a decision that was open to her. It follows that I uphold the finding that the appellant does not face a real risk of serious harm in the Philippines.
25. In reaching this conclusion, I have considered the submissions that because the appellant has previously been the victim of trafficking, that she is inherently likely to become so again, particularly given her vulnerability and the pressures likely to be placed on her. This submission

assumes there have been no changes to the appellant's circumstances or the circumstances in the Philippines. The judge made clear findings regarding the appellant's understanding of trafficking and her opposition to it, and also about developments in the Philippines. The judge was entitled to determine that the risk of serious harm no longer reached the relevant threshold to engage the UK's protection duties.

26. Because I find the judge's findings on the first issue are upheld, it is immaterial whether the appellant is a member of a particular social group in the Philippines and I do not need to spend time examining the second issue because even were I to find legal error, it would not entitle the appellant to refugee or humanitarian protection because the risk of serious harm is not present.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision to allow the appeal on Article 8 grounds only stands.

Judge John McCarthy

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

[DATE TO BE INSERTED]