IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003884

First-tier Tribunal No: PA/51267/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 2nd of November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

CDC
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Loughran, counsel, instructed by Birnberg Pierce
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 16 October 2023

ORDER REGARDING ANONYMITY

PURSUANT TO RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008, THE APPELLANT IS GRANTED ANONYMITY.

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. FAILURE TO COMPLY WITH THIS ORDER COULD AMOUNT TO A CONTEMPT OF COURT.

DECISION AND REASONS

Introduction

1. The Appellant is a victim of trafficking from the Philippines. She appeals with permission from the decision of First-tier Tribunal Judge Lawrence ("the Judge") dated 7 February 2023 ("the FTT Decision") by which he dismissed her appeal against the refusal by the Respondent dated 21 March 2022 of her protection and human rights claim.

2. As the Appellant is a claimed victim of human trafficking, I am required by s.1(1) and 2(1)(db) of the Sexual Offences Act 1992 to make an anonymity order in respect of the Appellant. I have done so in the terms set out above.

3. As will be apparent from what follows, the Appellant is a vulnerable witness within the meaning of the Joint Presidential Guidance Note No 2 of 2010. At the start of the hearing, I therefore asked Ms Loughran whether there were any adjustments to the hearing that I should consider making in light of that fact. She confirmed that, as this was an error of law hearing and the appellant would not be giving evidence, there were no adjustments required. None was therefore made. I note that the appellant had a benefit of an interpreter with her and I trust that through her counsel and interpreter, the proceedings were able to be explained to her after they took place.

The FTT Decision

4. After the Judge's introduction, the FTT Decision begins by summarising the hearing. At para. 5 the Judge noted that,

> "The Appellant is described in Ms Loughran's skeleton argument as a vulnerable witness, on the basis of the opinions stated in a report dated 4 September 2022 by Consultant Clinical Psychologist Dr Sarah Heke. Ms Loughran requested four adjustments at paragraph 6 of the skeleton argument. I stated at the outset of the hearing that I would need to be persuaded that members of the public be excluded from the hearing, but in the event that was not pursued by Ms Loughran and no other person attended the hearing. I assured the Appellant that she was permitted to leave the room as and when she chose without communicating a request for a break, so long as she did not discuss her evidence with anyone outside of the hearing room, but she did not choose to do so at any stage. The Appellant was not accompanied by any person other than her counsel and the second interpreter but she sat next to Ms Loughran during the hearing and I was satisfied that there was no overbearing cross-examination."

5. After setting out the parties' respective cases, the Judge at para.34 turned to his consideration of the appeal. At para.34, he set out an extract from IM (Sufficiency of Proteciton) Malawi [2007] UKAIT 00071, which set out various well-known proposition of asylum law, including the low standard of proof applicable.

6. At para.35, the Judge noted that the Respondent accepted the Appellant's account of her trafficking from the Philippines for labour exploitation and accepted that her experience of trafficking amounted to persecution.

7. At para. 36, he noted Prof Sidel's expert evidence of the Appellant's vulnerability to exploitation and at para. 37 had regard to the principle that past persecution is a serious indication of the person's well-founded fear of persecution or real risk of serious harm, unless there are good reasons to consider it will not be repeated. The Judge misstates this, as suggesting that past persecution makes it "likely" that it will be repeated, but nothing turns on that.

8. At para.38, the Judge summarised the Appellant's case that she believes that she will be unable to support her three younger children to achieve the higher level of education that she believes they require to avoid the exploitation she has endured without seeking work outside the Philippines. The Judge then stated, in what appears to be an introductory remark to what follows in subsequent paragraphs, that he found that there were good reasons to doubt that the Appellant genuinely held her claimed beliefs in this regard.

9. At para. 39, the Judge noted that the Appellant had not provided a summary of the family's current financial circumstances, including the costs of the education that is presently funded by the Appellant or her ex-husband, nor of the education that she wished to be able to fund for the three younger children.

10. At para. 40, it was noted that the Appellant stated in her oral evidence that her income in the UK is £520 per month and that she sometimes sends that money to her husband and children or to her mother and siblings. The Judge considered that this implied that her husband and children do not always need that money to find their present needs. He noted that the children continue to live in a property owned by the Appellant's husband.

11. At para. 41, the Judge assessed Prof Sidel's evidence, noting that her susceptibility to trafficking might be partially mitigated in the medium to long term by the earnings of the Appellant's children as they complete their secondar and/or tertiary education, attain professional qualification and secure employment. The Judge also noted Prof Sidel's view that this was unlikely to unfurl sufficiently quickly to allow for the Appellant to transition into a less central role in providing for her family over the next several years. At para. 42 however, the Judge noted that the Appellant had stated that one of her children, T, was expected to start work as a teacher in October 2022 and, as such, there was no need any longer to fund his education and it was reasonable to assume that he would now be able to contribute to the family's finances. At para. 43, the Judge noted that a further child, CM, was due to complete a Civil Engineering course in August 2024, after which it could be assumed she would look for work and would contribute to the family's finances. The Judge also noted that the Appellant's husband's family were relatively well-off, including her architect sister-in-law, who had previously provided financial assistance to the family.

12. At para. 44, the Judge noted that the Respondent had referred to background evidence in relation to funding available for underprivileged Filipino students to gain college degrees, which had benefited 1.6m students by May 2021. While the Appellant stated that she was unaware of this, the Judge noted that she had given evidence that CM was benefitting from a bursary for half her school fees. The background evidence was indicative of a reasonable likelihood that the Appellant's two youngest children could benefit from that or similar initiative.

13. At para. 45, the Judge considered the fact that, if she returned voluntarily, the Appellant would receive £3,000 from the Respondent. While Prof Sidel's evidence

had been that it was easy to see how quickly that sum of money would be spent on the Appellant's family's monthly living expenses, the Judge considered that the evidence regarding the family's expenses lacked clarity. Having considered that evidence, the Judge concluded that it was apparent that £3,000 was a very significant sum of money in relation to the costs of the children's education in the Philippines.

14. At para. 46, the Judge gave weight to Dr Heke's doubts that the Appellant have the ability and confidence to assert herself to negotiate better conditions than previously. However, the Judge considered that Dr Heke's opinion was predicated on an acceptance that the Appellant feels she will have no other option than seeking further employment in the Middle East because of the lack of job opportunities in the Philippines, whereas the Judge considered that the Appellant's evidence regarding the level of support her family needed was unsatisfactory.

15. At para. 47, the Judge noted Prof Sidel's evidence that the provision in the Philippines for destitute overseas migrant workers returning after experiences with trafficking remained inadequate. The Judge however found that the Appellant need not return to destitution, as she could benefit from the £3,000 reintegration assistance referred to by the Respondent and she has family in the Philippines including a son who is employed in a professional role, siblings and a mother who can reasonably be expected to assist her. While the economic situation in the Philippines and the Appellant's own prospects for employment were, the Judge considered, relatively poor, the Judge did not consider that the Appellant had established that she would be unable to find employment in a domestic capacity in the Philippines as she had before.

16. At para. 48, the Judge considered the evidence in relation to the protective measures put in place by the Philippines government in relation to those trafficked to the Middle East, but noted that it remained a significant problem.

17. At para.49, the Judge stated that in any event however, having considered the evidence in the round he did not find that the Appellant had established to the standard of a reasonable degree of likelihood that she would be unable without seeking work outside of the Philippines to support her three younger children to achieve the higher level of education that she aspires to for them, nor that she believed that to be the case. The Judge also found that the Appellant had not established that there was a reasonable degree of likelihood that, in the absence of such motivation, she would place herself in a situation where she was at a real risk of being re-trafficked through seeking work outside of the Philippines were she to return there with the benefit of reintegration support from the Respondent.

18. The Judge accordingly considered that the Appellant had not established that she was outside of her country of nationality owing to a well-founded fear of persecution.

19. Slightly oddly, the Judge dismissed the appeal only on Refugee Convention grounds, despite Articles 3, 4 and 8 ECHR being argued in the Appellant's skeleton arguments. However, no point has been taken on this, and I am satisfied that the lack of risk found by the Judge in relation to the asylum claim would necessarily defeat the human rights claims (and, for what it is worth, any humanitarian protection claim).

Appeal to the Upper Tribunal

20. There are eight grounds of appeal set out in the Grounds of Appeal, which were in summary as follows:

    a. Ground 1: Failure to have regard to the expert trafficking report of Elizabeth Flint;

    b. Ground 2: Failure to determine whether the Appellant was vulnerable witness and/or to consider the impact of her vulnerability on the Judge's assessment of the evidence;

    c. Ground 3: Failure to apply the correct standard of proof;

    d. Ground 4: Failure to have regard to relevant evidence of the family's financial situation and/or procedural unfairness in not asking further questions about this;

    e. Ground 5: Failure to determine risk as at the date of the hearing;

    f. Ground 6: Failure to have regard to material evidence as to the Appellant's family's needs and her son's ability to contribute to the family's finances;

    g. Ground 7: Engaging in impermissible speculation;

    h. Ground 8: Failing to make a finding on sufficiency of protection.

21. Permission to appeal was granted by First-tier Tribunal Judge Hamilton on 10 March 2023. Judge Hamilton considered that ground 2 was arguable. He considered that the remaining grounds did not appear particularly strong, but nonetheless granted permission on them all.

22. There was no rule 24 response from the Secretary of State.

23. During the hearing, I raised with the parties the fact that there was caselaw to which neither party had adverted relevant to the question of when an FTT Judge should put concerns to an appellant about their evidence. In order to give the parties an opportunity to consider these, I suggested that written submissions could be filed after the hearing. Ms Loughran indicated that she would consider the authorities and whether it was necessary to file further submissions, which she subsequently did (in submissions dated 17 October 2023). Ms McKenzie indicated that she did not wish to file anything further on the point.

24. That is the basis on which the appeal came before me to determine whether the FTT Decision involved the making of a material error of law.

Discussion

<u>Ground 2</u>

25. I start with Ground 2 because I consider, as Judge Hamilton did when granting permission, that it is the ground with the most obvious merit.

26. The Joint Presidential Guidance Note No 2 of 2010 ("the Guidance") is central to the fair administration of justice in the Immigration and Asylum Chamber, in which appellants and other witnesses who are vulnerable frequently appear and/or give evidence. Following the Guidance ensures that fact-finders provide the best practicable conditions for a vulnerable person to give their evidence, and for their vulnerability to be taken into account when assessing their evidence: SB (vulnerable adult: credibility) Ghana [2019] UKUT 398 (IAC); [2020] Imm AR 427.

27. In AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123, the Senior President of Tribunals (with whom Underhill and Gross LJJ agreed) held at [30], that a failure to follow the Guidance will "most likely be a material error of law". In my judgment, the adjectival expression "most likely" in that phrase is applicable to whether the error is material, rather than whether it will amount to an error of law, and is intended as a prediction not a statement of legal principle in relation thereto. In other words, a failure to follow the 2010 Guidance will always amount to an error of law. There is then, as in all appeals, a question of materiality and the Senior President's statement is to be read as no more than that he anticipated that in many cases such a failure would be material. This is unsurprising given the high threshold for finding that an error of law is immaterial (see Detamu v Secretary of State for the Home Department [2006] EWCA Civ 604 at [14] and [18]), which is particularly so when an error feeds into a judge's credibility assessment. Materiality remains nonetheless a question for the Upper Tribunal to determine on the facts of each case.

28. As noted above, the Judge mentioned the Appellant's vulnerability at para. 5 of the FTT Decision and considered how, if at all, the hearing needed to be adapted to cater for that. The Guidance requires more of FTT Judges than that however. While it does not require a Judge to take any particular view of a vulnerable witness' evidence (see SB, cited above), it requires, at para. 15, that "The decision should record…the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it".

29. Despite this provision of the Guidance Note having been expressly drawn by Ms Loughran to the Judge's attention, the FTT Decision makes no record of the effect that the Judge considered the Appellant's vulnerability had in assessing the evidence, if any.

30. Ms McKenzie submitted on behalf of the Respondent that, while the Guidance had not been cited, it had been applied. She suggested that this was clear from paras. 5 and 46 of the FTT Decision. Taking those in turn:

    a. I have set out para. 5 above, and, while it is clear that the Judge was aware of the Appellant's vulnerability and for the need, pursuant to other aspects of the Guidance, to consider making adjustments to the way in which the hearing proceeded, there is nothing in it about the effect of the Appellant's vulnerability on the Judge's assessment of the evidence.

    b. Para. 46 of the FTT Decision has nothing to do with the Judge's assessment of the Appellant's evidence and the impact of the Appellant's vulnerability on that. Rather it provides a consideration of the way in which her vulnerability would affect her ability to avoid re-trafficking on return to the Philippines. This does not satisfy the requirements of para. 15 of the Guidance.

31. Can I nonetheless be satisfied that this error was not material? The threshold for immateriality is whether the Tribunal would have been bound to reach the same conclusion without the error. In a case where, even though not specifically recorded, the Tribunal had made clear what impact an Appellant's vulnerability had had on the assessment of the evidence, it might well be possible to conclude that the error in this case was immaterial. The difficulty here however is that there is simply nothing to indicate that the Judge considered whether the Appellant's vulnerability should affect his approach to the Appellant's evidence, and if so, how. Given that, I am not in a position to conclude that this error is immaterial.

32. Given that this error potentially goes to the Judge's assessment of credibility, Ms McKenzie properly accepted that a finding that this error was made out would require remittal to the First-tier Tribunal for redetermination *de novo*. I agree that that is the proper course.

33. That being so, I can deal with the other grounds somewhat more shortly.

Ground 1

34. By this ground the Appellant suggests that the Judge left out of account the expert report of Elizabeth Flint.

35. It is now however trite that an appeal court is bound, unless there is compelling reason to the contrary, to assume that a trial judge (which includes an FTT Judge exercising a fact-finding jurisdiction) has taken the whole of the evidence into consideration and that the fact that a judge does not mention (*a fortiori* reproduce or expressly weigh up) a specific piece of evidence does not mean that they overlooked it: see Volpi v Volpi [2022] EWCA Civ 464, [2022] 4 WLR 48 at [2(iii)] and the many cases cited for that proposition at [3] thereof.

36. The evidence of Ms Flint was referred to by the Judge in para. 22 of the FTT Decision. He was clearly aware of her evidence. In my judgment there is nothing (even less a compelling reason) to indicate that he left it out of account. This ground is rejected.

Ground 3

37. By this ground the Appellant suggests that in paras. 38 and 47 the Judge applied too high a standard of proof.

38. There was no dispute before the Judge as to the standard of proof and, as noted above, he set it out expressly in para.34. Mr Loughran, in her Grounds of Appeal, also accepts that he applied it correctly in para. 49. She submits however that it was misapplied in paras. 38 and 47.

39. In para. 38, the Judge stated that "there were good reasons to doubt" the Appellant's claim that she believes that she will be unable without seeking work outside of the Philippines to support her three younger children adequately. This is however a clear reference to the requirement in paragraph 339K of the Immigration Rules that prior persecution is a serious indication of the person's well-founded fear of persecution or real risk of serious harm, unless there are good reasons to consider it will not be repeated. In my judgment the Judge was considering that question, not the ultimate question of whether the Appellant was

at a sufficient risk on return so as to be a refugee to which the lower standard applies.

40. In para. 47, the Judge accepted that the Appellant's prospects of employment are relatively poor, but did not consider that she had "established that she would be unable to find employment in a domestic capacity". The Appellant submitted that the use of the word "established" indicated that a higher standard had been applied. I disagree. The use of the word "established" is entirely neutral as to the standard being applied. It does not, without more, mean, as the Grounds suggest "establish definitively". A prosecutor has to *establish* criminal offending beyond reasonable doubt, a civil claim must be *established* on the balance of probabilities and a protection claim must be *established* to the lower standard. Use of the word established does not indicate an erroneous standard of proof has been applied here. This ground is accordingly also rejected.

Ground 4

41. This ground relates to the Judge's conclusion that the evidence the Appellant gave about her family's finances was unsatisfactory. It is put on two bases: that in reaching that conclusion the Judge failed to have regard to relevant evidence, and second, that it was a finding reached in a procedurally unfair manner. As there was some discussion at the hearing and post-hearing submissions in relation to the procedural fairness aspect of this ground, I deal with it in somewhat more detail.

42. The highest the Appellant puts her case in relation to a failure to take account of material evidence is that there is no reference to it in the FTT Decision. As set out above, that is not, of itself sufficient. There must be a compelling reason to displace the assumption that a trial judge has taken all of the evidence into account. This aspect of the Ground must therefore be rejected.

43. In relation to procedure, the Appellant's submission is that if the Judge required clarification in relation to the Appellant's evidence he could have asked her questions at the hearing, but did not do so, which was, Mr Loughran submitted, procedurally unfair. I am unable to accept that for two reasons.

44. First, this ground relies on what Ms Loughran says occurred before the First-tier Tribunal. There is however no evidence before me as to what was said or not said before or by the Judge. She is however not a witness, the grounds do not prove themselves and there was no concession by the Respondent that the description given in the Grounds as to matters said or not said by the Appellant and the Judge were accurate. In those circumstances, it seems to me that there is no evidential basis for the submission of procedural unfairness.

45. Ms Loughran correctly pointed out in her oral submissions that in her Grounds she had included a footnote stating in relation to what occurred below that, "Counsel drafting these grounds was counsel at the hearing. Please inform the Appellant's representative as soon as possible if this is disputed." She also noted that the Respondent had not responded to the appeal by way of rule 24 response, let alone indicated that the version of the facts set out in the Grounds was disputed. At the hearing, I asked whether it might be unfair to preclude the Appellant relying on this ground without an opportunity to put in evidence, in circumstances where the Respondent had simply not replied to that request, but could have done so. Ms McKenzie was not opposed to that as a way forward if it

might make a difference to the outcome (which, in light of my conclusions on ground 2, it does not).

46. However, having reflected further, this seems to me to put the cart before the horse. If an appellant (which could equally be the Secretary of State where she is the losing party below) wishes to show that what occurred before the FTT was unfair in some way, they have to prove what happened unless it is not disputed. The assessment of the fairness of the procedure is then able to be assessed on the proved facts. Unless and until an appellant receives confirmation that there is no dispute as to what occurred, they have that burden and ought to take steps to ensure that they can furnish the Tribunal with the necessary evidence. It cannot be said, for example, that because the Respondent did not provide confirmation one way or the other, that the Appellant was deprived of their opportunity to put in the evidence. Rather, they took a decision not to do so in the hope that the point would not be taken against them. That is a risk which may have unfortunate consequences for an appellant, but it does not mean that they have not had a fair opportunity to put in such evidence as is necessary to make good their ground of appeal. Given the existence of rule 24 of the Tribunal Procedure Rules, an appellant might be forgiven for waiting until the deadline for a response passes before taking the necessary steps, but save in limited circumstances there is no requirement for a respondent to file a rule 24 response so once that deadline has passed, an appellant takes a real risk of being unable to prove her case if steps are not taken at that stage to obtain the necessary evidence of what occurred before the First-tier Tribunal, whether that is the transcript of the hearing, or a witness statement from someone in attendance.

47. That does not mean that a respondent that is asked to confirm their position at an early stage is blameless, but in my view, while this might amount to unreasonable litigation conduct for the purposes of a costs order, it does not affect the onus on an appellant to obtain the necessary evidence to prove what occurred before the FTT.

48. The second reason for rejecting this ground is that, even assuming that Ms Loughran's account of what occurred before the First-tier Tribunal is accurate, I do not consider that it gave rise to any procedural unfairness.

49. In her post-hearing submissions, Ms Loughran addressed the two cases I adverted to at the hearing: Maheshwaran v Secretary of State for the Home Department [2002] EWCA Civ 173; [2004] Imm AR 176 and HA v Secretary of State for the Home Department (No 2) [2010] CSIH 28; 2010 SC 457. I accept Ms Loughran's submission that these cases establish (or perhaps more accurately reiterate) that (a) the requirements of fairness are very much conditioned by the facts of each case; (b) whether a particular course is consistent with fairness is essentially an intuitive judgment which is to be made in the light of all the circumstances of a particular case; and (c) while there is no general obligation on the Tribunal to give notice to the parties during the hearing of all the matters of which it may rely in reaching its decision, fairness may require the Tribunal to disclose concerns about the evidence to provide an opportunity to address them.

50. I would note that Maheshwaran at [3] also gives guidance as to the relevant factors that may indicate whether it is unfair to put a point to a party: (a) that a burden of proof lies on an appellant; (b) facts to be proved may be in relation to matters which no one before the Tribunal is in a position to corroborate; (c) the Tribunal frequently has several cases listed in front of it on the same day; (d) FTT

Judges cannot be expected to be alive to every possible nuance of a case before the hearing starts; (e) decisions are generally reserved and during the process of considering and writing the decisions points will sometimes assume a greater importance than they appeared to have at the hearing; (f) FTT Judges will generally be cautious about intervening in case it is said that they have descended into the ring or otherwise give an appearance of bias.

51. In HA, Lord Reed also emphasised (at [8]) that it was important whether, by virtue of the nature of the evidence adduced, an appellant could reasonably proceed on the basis that there was no need for him to adduce further evidence on a particular point. This point was demonstrated by reference to an earlier case in which a letter had been adduced from Amnesty International and it was noted that "in the particular circumstances of that case, the applicant could reasonably proceed on the basis that there was no need for him to adduce evidence on this vital point besides the letter, given that the letter was unchallenged and came from a source which was generally treated as reliable (and had recently been treated as reliable in relation to that very letter [in separate proceedings]), unless he was put on notice of the adjudicator's concern.

52. It seems to me, with respect of Mr Loughran's able submissions both orally and in writing, that there was no procedural unfairness here. The Appellant cannot but have known (on advice) that she would have to demonstrate to the satisfaction of the Judge that her family's finances were such that she would need to find work on return to the Philippines and that the Judge would scrutinise the evidence that she put forward not only as to what it said, but also as to what it did not. That was the very reason she said she was at risk of re-trafficking. Her own, largely uncorroborated, evidence of her family's finances is not in any way comparable to the sort of evidence, namely the Amnesty International letter, which a litigant can reasonably assume will be accepted without more. In all the circumstances of this case, I do not consider that the Judge's approach (assuming the Appellant's Grounds to describe it accurately) was unfair.

53. This ground is accordingly therefore rejected.

Ground 5

54. It is well established, and not disputed by the Respondent, that the FTT was obliged to determine the Appellant's appeal as at the date of the hearing. By this Ground, the Appellant suggests that the Judge did not do so. This is on the basis that at various points in the FTT Decision the Judge refers to anticipated future matters, such as the Appellant's children ceasing education and starting work and the anticipate receipt from the Respondent of £3,000 resettlement allowance.

55. I am unable to accept this ground. The Appellant's case before the FTT was that she would be required to obtain work abroad on her return, with a concomitant risk of being re-trafficked. That required the Judge to consider her and her family's finances, but did not require the Judge to ignore anticipated future changes to the extent that those could impact on whether she would be required to obtain work as at the date of the hearing. Whether she would need to travel abroad to find work would plainly depend not just on whether the family needed money on that day, but also on the duration of the period for which there might be a shortfall. The fact that, as the Judge found, some of the Appellant's children would not need their education paying for for much longer, that they would shortly be starting work and so could themselves contribute to the family

finances, and the fact that the Appellant would be entitled to return to the Philippines with £3,000 from the Respondent (potentially covering shortfall for a significant period of time) were plainly, in my judgment, matters that the Judge was entitled to take into account in deciding what the position was as at the day of the hearing. I do not read the FTT Decision as doing more than that. The Judge was not assessing whether the Appellant would become a refugee at some point in the future but whether she was one at the date of the hearing by reference to what might reasonably be expected to happen in the near future. This ground also accordingly fails.

Ground 6

56. In relation to this ground, the Appellant submits that the discrepancies between the Appellant's written and oral evidence were not put to her and that the Judge failed to consider the Appellant's written evidence, or erred in failing to adequate reasons why he preferred an implication drawn from the Appellant's oral evidence to her written evidence.

57. I do not accept any of these arguments. The inference which the Judge drew that the Appellant's husband and children do not always need the money that she sent them from the fact that the Appellant said that she "sometimes" sent them money was one which was plainly open to him. I do not consider that it was procedurally unfair not to put the discrepancy between what was said in oral evidence and what was said in the Appellant's witness statements. As noted above in relation to ground 4, there is no general rule that discrepancies must be put and there was nothing about this which in my view required the Tribunal to depart from that general rule. I also do not consider that the Judge failed to give adequate reasons. It is clear from para. 40 that the Judge considered that the Appellant's use of the word "sometimes" was telling for the reasons he gave. I do not consider that there are compelling reasons to depart from the assumption that the Judge had considered and taken into account all of the evidence, including the interview statement and asylum statement.

58. Similarly in respect of the Appellant's son, I do not consider that the Judge's failure to refer to his witness statement means that he overlooked it. Likewise, I do not consider that he failed to give adequate reasons for concluding that T would be able to contribute to the family's finances. Indeed, T's own evidence was that he would do his best to try and help his siblings, though he would not have enough on his own to support them.

59. Ground 6 therefore fails.

Ground 7

60. By this ground, the Appellant submits that the Judge engaged in speculation in relation to his conclusion on remittances and the ability of the Appellant's son to provide support. I do not accept that. The drawing of inferences is a well established and orthodox form of fact-finding and the courts have emphasised that the nature of the evidence that may be considered in deciding whether to draw or not draw an inference is almost limitless, the drawing of inferences is a matter of ordinary rationality and common sense and given that the drawing of inferences requires an evaluative assessment, it is not one with which an appellant court will lightly interfere: see Fortune v Wiltshire Council [2012] EWCA Civ 334; [2013] 1 WLR 808 at [22]; Efobi v Royal Mail Group Ltd [2021] UKSC 33;

[2021] 1 WLR 3868 at [41]; Fage v Chobani [2014] EWCA Civ 5 at [114]. There is, of course, a line between the legitimate drawing of inferences and unevidenced and illegitimate speculation, but I consider that the Judge was well inside the margin to which he was entitled here.

Ground 8

61. Finally, the Appellant suggests that the Judge failed to make findings about sufficiency of protection. I do not accept that either. While it could have been more clearly expressed, I consider that the inclusion at the start of para. 49 of "in any event" before concluding that the Appellant is not at risk is highly indicative that the Judge accepted that there was insufficiency of protection in the Philippines. I would have been helpful if the Judge had said so, but I do not consider that he failed to decide this issue. There is no reasons challenge in respect of this aspect of the claim. This ground is therefore rejected.

Post-script

62. There was one point raised during the course of the hearing before me, which does not appear to have been picked up by either party or the Judge below and which did not formally form any part of the appeal before me, but which may be important for the FTT to consider on remittal, and which is therefore worth mentioning. That is whether the Appellant's fear is of persecution in the Philippines or elsewhere and what effect that has on her entitlement (if she otherwise makes good her claim) to refugee status.

63. As I understand it (and I emphasise that I did not hear argument on and am not deciding the issue), an individual is only a refugee if their fear is of persecution is in his or her country of nationality (see e.g. Dhoumo v Board of Immigration Appeals (2005) 416 F.3d 172, at 174, quoted in Hathaway and Foster, The Law of Refugee Status, 2nd ed., (CUP, 2014), p.53).

64. I have not conducted a detailed review of the way the Appellant puts her case, but, for example, she states in para. 2 of her Response to the Respondent's Review that she fears being "exposed to domestic servitude *in the Middle East region*" and it seems to me that unless she can show that she is at risk of being trafficked to the Middle East from the Philippines or that there is some other sufficient nexus between her fear and her country of nationality (to use the words in Article 1A(2) of the Convention), or unless I am wrong in my understanding of that requirement, her claim necessarily fails.

65. Mr Loughran indicated that she was alive to the issue and that the Appellant's claim, when properly considered, was within the scope of the Refugee Convention. As I have said, that is not a matter for me to resolve, but it is one which will in my view require careful scrutiny on remittal.

Notice of Decision

The decision of the First-tier Tribunal involves the making of a material error of law. It is remitted to the First-tier Tribunal for remaking. There are no preserved findings.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 October 2023