



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000273

First-tier Tribunal No: PA/50258/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 22nd of March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

ASE
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Wong of Counsel instructed by MBM Solicitors

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 6 March 2024

DECISION AND REASONS

Introduction

1. The appellant is a citizen of the Philippines born on 25 August 1982. The appellant's application for protection was refused on 9 January 2023. Her appeal against the decision was dismissed by First-tier Tribunal Judge Farmer ('the judge') on 12 October 2023 after a hearing on 11 October 2023.
2. Permission to appeal was granted by Judge of the First-tier Tribunal Chowdhury on 24 January 2024 on the basis that it was arguable that the judge had erred in law, in finding that the appellant did not fall within the Refugee Convention; in failing to make a finding on whether the appellant's claim to have been a victim of domestic violence falls under the Refugee Convention; in her findings on risk on return; and in

failing to make findings in relation to the appellant's family's circumstances in the Philippines and in failing to give adequate reasons for the conclusion that the appellant need not seek overseas employment.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and thus whether the decision should be set aside.

Submissions – Error of Law

4. In the grounds of appeal and in oral submissions by Ms Wong it is argued, in short summary, for the appellant as follows:
5. It was Ms Wong's primary contention in oral submissions that the judge did not engage with the CPIN on Human Trafficking, dated November 2022, including in her findings that the appellant was not a member of a particular social group (PSG) and in the judge's findings her claim did not engage the Convention. Ms Wong relied on **TD and AD (Trafficked women) [2016] UKUT 92.**
6. Ms Wong helpfully drew my attention to a number of paragraphs in the CPIN. Ms Wong argued in respect of ground 3 that the judge erred in her findings at paragraph [43] that there was sufficiency of protection and did not adequately consider the evidence in the CPIN. Ms Wong further argued that the judge's findings were in error in relation to internal relocation. In respect of ground 2, Ms Wong restated the grounds of appeal, that the judge had failed to make a finding on the appellant's claim that she was a victim of domestic violence falls to be considered under the Convention as a member of a but was unable to identify where the appellant had raised this as an issue before the First-tier tribunal.
7. Although there was to Rule 24 response, in oral submissions by Ms Ahmed for the respondent it is argued, in short summary as follows:
8. Although there were limited challenges to the findings of fact at ground 3, the majority of the findings of fact were not challenged and she submitted that the oral submissions were a reargument of the case with a number of new grounds raised in Ms Wong's oral submissions. Although it had been submitted that the judge had not had regard to the entirety of the CPIN the judge did have regard to the CPIN. Although the permission grounds relied on **MST and Others (national service -risk categories) Eritrea CG [2016] UKUT 443 (IAC)** in relation to the home office not having any legal competence to decide whether a country guidance case is to be followed or not, the grounds do not identify which country guidance it is said that was not followed by the judge. **TD and AD** was not in the grounds for permission to appeal.

9. It was submitted that Ground 1 was not made out. Ground 2 was not raised as an issue before the First-tier Tribunal and Ms Ahmed noted again that the judge did take the CPIN into account. The evidence indicates that the ability to internally relocate depends on the circumstances. No error is disclosed in ground 2.
10. Ground 3 argued that the judge erred in her assessment of risk on return, with reference again made to the CPIN including that the Philippines is a hub for trafficking. It was submitted that the judge properly considered the CPIN evidence in reaching her findings on risk on return. There was no challenge in the grounds to the judge's findings on sufficiency of protection nor to her findings on internal relocation at paragraph [42]. It was submitted that the decision had to be read in its entirety, including the judge's findings at [26] to [29] which set out why the appellant would not be at risk on return of domestic violence and that there was no credible evidence that the appellant was of continuing interest to her ex-partner or that he had connections that would put the appellant at risk. The judge made sustainable findings from [30] to [36] setting out why the appellant would not be risk of re-trafficking.
11. Ms Ahmed submitted that the findings challenged at ground 4 were open to the judge. It was further submitted that the appellant had not raised the lack of a support network on return to the Philippines.

Conclusions - Error of Law

Ground 1

12. There was no error in the judge's approach to the issue of whether the appellant fell within the refugee convention. Having correctly set out the legal framework from paragraphs [14] to [19] and having noted that the respondent had accepted that the appellant had been trafficked and that she had a subjective fear of her ex-partner, the judge set out her findings on whether the fact that the appellant was an accepted victim of trafficking engaged the Refugee Convention, as the member of a PSG as a female victim of trafficking and modern slavery.
13. The judge indicated that she scrutinised the particular circumstances of the appellant's case and whether there were any facts relating to her accepted circumstances that would lead to the conclusion that she falls within a PSG (paragraph [25]). The judge, having indicated that she had considered the November 2022 CPIN on Philippines: Human Trafficking (paragraph [19]) noted that paragraph 2.3 stated that potential victims of trafficking are considered to form a PSG, although paragraph 2.3.3 of the CPIN states that women and children trafficked for sexual exploitation were likely to form a PSG because they did share an innate characteristic and did have a distinct identify because of the prevailing attitudes towards women and child victims of sexual trafficking [24]. The judge went on to note that the appellant claimed

domestic servitude, not sexual exploitation and therefore did not fall within this exception.

14. Although the grounds pointed to other sections of the CPIN including 5.1.1 and 5.1.4, there is nothing to suggest that the judge did not also consider these sections, which in any event do not contradict the judge's reasoned findings.
15. Whilst the grounds also argued, in the alternative, that the judge erred in considering the CPIN binding on the Tribunal, there is nothing to support this assertion, with the judge clearly indicating that she considered all the factors. Neither the grounds nor Ms Wong were able to point to any evidence that the judge failed to take into account or that might suggest she erred in finding that the appellant was not a member of a PSG.
16. Although Ms Wong sought to rely on **TD and AD** which considered including that trafficked women from Albania may well be members of a PSG including due to the risk of re-trafficking, in addition to that argument not being made before the First-tier Tribunal, it does not in any event engage with the evidence before the judge, including the CPIN which indicated that potential victims of trafficking in the Philippines do not have a distinct identity in the Philippines and to not share an innate characteristic such that they fall within the definition of PSG.
17. The judge's findings were unarguably open to her. In addition, I also note that any claimed error could not be material, given the judge's substantive findings at [31] to [36] that the appellant was not, as a matter of fact, at risk of re-trafficking on return.
18. Ground 1 is not made out.

Ground 2

19. Although ground 2 argued that the judge failed to make a finding on whether the appellant's claim that she was a victim of domestic violence falls to be considered under the Refugee Convention as a PSG, that is not in fact the case.
20. There was no indication that the appellant was arguing that she was a member of a PSG on the basis of the fact she was an accepted victim of domestic violence. I take into account including what was said in **Lata (FtT: principal controversial issues) India [2023] UKUT 163 (IAC)** which confirms that parties are under a duty to provide the First-tier Tribunal with relevant information as to the circumstances of the case, including defining and narrowing the issues in dispute. A party that fails to identify an issue before the First-tier Tribunal is unlikely to have a good ground of appeal before the Upper Tribunal.

21. In any event, the judge did in fact consider the issue of PSG generally, not just in relation to re-trafficking, finding as follows at [25]:

“However I am not satisfied that there is anything either about her accepted account of being trafficked, **or any other personal characteristics held by her that would lead to her being a member of a PSG or any other grounds under which she can engage the Convention.** (*my emphasis*) I am therefore satisfied that her claim does not engage the Convention.”

22. In addition, as with ground 1, any claimed error cannot be material, given the judge’s findings at [26] to [29], that the appellant was not, as a matter of fact, at risk on return from her ex-partner.

Ground 3

23. Ground 3 argued that the judge erred in her assessment on risk on return, with the grounds setting out some of the judge’s findings at paragraphs [31] and [35]. The grounds go on to acknowledge that the judge stated at [34] that she considered the CPIN, before going on to state that the CPIN was contrary to the Judge’s findings.

24. The grounds as a whole are somewhat contradictory, with ground 1 founded on the (mistaken) premise that the judge attached too much weight to parts of the CPIN, whereas Ground 3 argues that too little weight was attached.

25. The assessment of weight is generally for the First-tier Tribunal: **AE (Iraq) v Secretary of State for the Home Department [2021] EWCA Civ 948 [2021] Imm. A.R. 1499.** Disagreement with the judge’s reasoned findings does not constitute an error of law.

26. Read fairly and in its entirety, the judge’s decision provides cogent reasoning and is sustainable. The judge set out clear evidence-based reasons from [26] to [29] why the appellant was not at continued risk from her ex-partner on return, including that there was no credible evidence that she remains of interest to him and no credible evidence that he has connections which would put the appellant at risk. The judge then from [30] to [36] made findings on the risk of re-trafficking, concluding at [36] that the appellant had not established to the lower standard that she was ‘at risk from her previous traffickers or more generally’.

27. The judge’s findings at [31] and [35] relied on in ground 3, are selective and fall into the realm of ‘island-hopping’. The judge took into account that the appellant had sought work through an agency in the Philippines and had initially worked in Saudi Arabia for 2 years and was ‘well paid and had no complaint’. The judge went on to note that it was the second agency and the appellant’s second job overseas, in Qatar that resulted in the appellant’s ‘domestic servitude and consequent abuse’. The judge took into account that in those circumstances the appellant

had approached the agency looking for better paid overseas work. It was in this, evidence based, context that the judge went on to reach the finding that the appellant on return to the Philippines would not need to approach such an agency again.

28. In reaching these findings, the judge took into account all the evidence and was aware of the CPIN, which she referenced on a number of different occasions. She was aware therefore that the Philippines is a source country for human trafficking, that traffickers use the promise of fake job positions abroad, that the most common recruitment method is false promises of job placement and that traffickers increasingly use social networking sites and other digital platforms to recruit unsuspecting Filipinos.
29. As the appellant's representative reminded in respect of ground one, the CPIN was not binding on the judge, who was required to consider all the evidence in the round, in reaching her reasoned conclusion that this appellant would not in the circumstances of her return be vulnerable to re-trafficking.
30. This included that the appellant's previous experience and circumstances of being trafficked were relevant and that two of her three children are now adults, that she has a family network and is in good health. In finding that there was nothing to prevent the appellant seeking legitimate employment in the Philippines, it was open to the judge to take into account that it was the appellant's evidence that she was able to work in the UK (if permitted to do so).
31. The judge also took into account that the appellant, as a failed asylum seeker, might be entitled to up to £3000 of financial support and the judge was entitled to factor this into her consideration (**OA (Somalia) CG [2022] UKUT 00022 (IAC)**). There was no challenge to those findings. It was further open to the judge to consider the CPIN including, at 2.4.1, that in general a person is unlikely to be at risk of reprisal from their original traffickers with the judge finding no credible evidence that the appellant would be traced or targeted by her previous employers from Qatar. Again, there was no challenge to those findings of fact.
32. The judge considered that the appellant could find employment in the Philippines and it was open to her to take into account that she would be aware of the risks of false promises of jobs and a high income.
33. Drawing all that evidence and her findings together, it was open to the judge to find that the appellant was not a vulnerable person on return. The judge went on from [37] to [41] to find that the appellant was at risk on return from money lenders. Again there was no challenge to those evidence-based findings.
34. There is no merit in ground 3 as pleaded. Although Ms Wong attempted in oral submissions to attack the judge's alternative findings on

sufficiency of protection from [42] to [46] and internal relocation at [42], such a challenge was not in the grounds appeal and was therefore not properly before me. It could not be said to be *Robinson* obvious.

35. In any event, even if such arguments were before the Upper Tribunal, they are without merit, as they again amount to no more than a disagreement, with Ms Wong effectively disagreeing with the weight that the judge attached to various parts of the CPIN. Whilst Ms Wong further argued that the appellant had mentioned in her asylum interview, the claimed influence of her former partner, the judge had not accepted this, having found there to be no credible evidence that she was of any interest to him or that he had connections that would put her at risk (paragraphs [28] and [29]). Those findings were not challenged. It was open to the judge therefore to find at [42] that internal relocation was an option, but as the judge stated, she was not satisfied in any event that such would be necessary.

36. Ground 3 is not made out.

Ground 4

37. Ground 4 is similarly without merit. Although it was argued that the judge failed to make a finding on the family's circumstances, that is clearly not the case as the judge made findings on the available evidence that the appellant has a family network including 2 adult children in the Philippines.

38. Whilst the grounds argued that the judge did not make a finding on whether the children were working or whether the brother could support the appellant, the grounds do not point to any available evidence that the judge was said to have failed to reach a finding on.

39. The judge's finding that this appellant does not need to seek overseas employment, at [31] was, contrary to ground 4, founded on careful, evidence based reasons from [30] to [36] in relation to both the appellant's circumstances and the background country information.

40. Ground 4 amounts to a disagreement and is not made out.

Decision:

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

M M Hutchinson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date

15 March 2024