



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

Appeal no: **AA/06327/2011**
AA/06332/2011

THE IMMIGRATION ACTS

At **Field House**
on **15 October 2013**

Determination Sent

Before:

**Upper Tribunal Judge Gleeson
Upper Tribunal Judge Pitt**

Between:

**X Q X
J Y X
(ANONYMITY ORDER MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms Cronin, instructed by Bindmans LLP

For the respondent: Mr Avery, Senior Home Office Presenting Officer

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. Having regard to the accepted history and vulnerability of the first appellant and the minority of the second appellant, we continue that order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

NOTICE OF WITHDRAWAL OF DECISION TO REMOVE

1. The appellants are citizens of China and are mother and daughter. They appealed to the First-tier Tribunal against the respondent's decision dated 17 May 2011 to remove them to China, following her refusal of the

principal appellant's asylum, humanitarian protection and human rights claims.

First-tier Tribunal determination

2. First-tier Tribunal Judge Youngerwood found the principal appellant to be a credible witness who had given a reliable account of her circumstances, and concluded that she was a victim of trafficking. Clear findings of fact and credibility were made at paragraphs 27-28 of the determination, concluding that:

“I am ultimately persuaded that the [principal] appellant's account has been essentially consistent and plausible and I, therefore, accept it as an essentially true and accurate account.”
3. The First-tier Tribunal allowed the appellants' appeals on the limited basis that the respondent's decision to remove them was not in accordance with the law by reason of her failure to carry out her duty to refer the principal appellant's trafficking claim to the National Referral Mechanism (NRM) pursuant to the Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005 (the Trafficking Convention) and her own policy guidance thereon¹. The First-tier Tribunal did not proceed to determine the remaining grounds of appeal before the Tribunal, under the Refugee Convention and the ECHR.
4. The respondent neither appealed the findings of fact and credibility nor challenged them in a rule 24 Reply. They therefore stand.
5. The appellants appealed, arguing that it was an error of law not to determine all the heads in the grounds of appeal, and that the First-tier Tribunal should have made findings on human rights, humanitarian protection and asylum, as well as dealing with the principal appellant's claim to be a victim of trafficking.

Upper Tribunal hearing

6. For the appellants, Ms Cronin submitted that the First-tier Tribunal had erred in law in failing to determine the refugee and human rights elements of the appeal, notwithstanding the unlawfulness of the respondent's decision as regards the Trafficking Convention.
7. For the respondent, and in response to Ms Cronin's submissions, Mr Avery withdrew orally the respondent's May 2011 decision to remove the appellants. He confirmed that withdrawal in writing on 15 October 2013.
8. Ms Cronin expressed concern at the late withdrawal of the refusal decision and invited the Upper Tribunal to refuse to accept it, having regard to the provisions of paragraphs 17 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (as amended) and The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended). We indicated, provisionally, that we did not consider that either of the Rules 17 in the Procedure Rules had the

¹ “Victims of Trafficking: Guidance for competent authorities” and “Victims of trafficking: Guidance for frontline UK Border Agency Staff” available here: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/>

effect of impeding or preventing the respondent from withdrawing her decision to remove, and thus bringing the appeal proceedings before the Upper Tribunal to an end.

9. However, we acceded to Ms Cronin's request for a short period (4 days) in which to provide written submissions concerning the extent of the Upper Tribunal's power to accept, or refuse to accept, the respondent's withdrawal of her removal decision. By an email dated 18 October 2013, Ms Cronin accepted that the respondent's withdrawal of the underlying removal decision, from which arose the appeal right under s.82 of the Nationality, Immigration and Asylum Act 2002, did not equate to a s.17 withdrawal of her 'case' before the Upper Tribunal, for which the permission of the Tribunal was required. The respondent had power at any time to withdraw the underlying decision. Indeed, the respondent has the implied power, subject to general principles of public law, to withdraw any decision taken under statute, unless such power is expressly excluded.
10. The respondent remains under a duty to refer the principal appellant's trafficking claim to the NRM. Subject always to the outcome of that referral, it is open to her to make a further decision to remove, should she consider that to be appropriate. In any such decision, it will be necessary for her to take into account:
 - (a) the positive findings of fact and credibility made by the First-tier Tribunal in these proceedings (see *Danaei, R (on the application of) v Secretary Of State For Home Department* [1997] EWHC Admin 301, [1998] Imm AR 84 CA); and
 - (b) the best interests of the second appellant and a further child, a son, as required by s.55 of the Borders, Citizenship and Immigration Act 2009 (*ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4).
11. The respondent has withdrawn the removal decision which was the subject of this appeal. That being the case, there is no longer any adverse decision against which a valid appeal lies.

Signed:
Upper Tribunal Judge Pitt

Dated: