



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12146/2018

THE IMMIGRATION ACTS

Heard at Field House
On 11th July 2019

Decision & Reasons Promulgated
On 20th August 2019

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

T K
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr U Sheikh, Ansar Solicitors

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, appeals with permission, the determination of First-tier Tribunal Judge Cary who in a decision promulgated on 26th November 2018 dismissed her appeal against the respondent's decision to refuse her protection and human rights claim.
2. The appellant is a citizen of Thailand, born on 3rd January 1991 and is now aged 28. She is a transgender woman as her gender identity does not correspond to the male gender assigned to her at birth. She states she arrived in the United

Kingdom 2014 and came to the attention of the authorities in early 2015 when she was arrested. The respondent accepted that the appellant was trafficked into the United Kingdom. She confirmed in her “method of entry” interview on 3rd July 2015 that she had been told in Thailand that she was going to work in a restaurant but when she arrived, she was forced to work as an escort. The authorities concluded that there were reasonable grounds to believe that she had been trafficked into the United Kingdom on 27th January 2015.

3. The appellant, in her claim for protection, stated that she had incurred a substantial debt to fund the cost of her trip to the United Kingdom which she had repaid in the sum of approximately £50,000. She said that she would face problems in Thailand if she was returned because her family in Thailand had subsequently borrowed some money which was still outstanding and needed to be repaid; if it were not it would be dangerous for her family and herself. She also said that she would face problems in view of her wish to change gender and that she wished to have a sex change operation in the United Kingdom.
4. The Secretary of State, on 16th September 2018, accepted that she was a victim of human trafficking but rejected her claim for international protection on 3rd October 2018 because it was not considered she would be at significant risk of re-trafficking on her return to Thailand. She would not experience problems entitling her to international protection and she would not be of genuine interest to anyone in Thailand owing to an outstanding debt.
5. The First-tier Tribunal judge in his determination at paragraph 29 made findings in relation to the appellant’s circumstances noting that he took into account her age, level of education, health and the evidence she had given throughout her application. He found that the appellant was not uneducated; she had stated that she had attended high school in Thailand and that although she started university she did not finish. In her asylum interview, where the appellant was legally represented, she confirmed that she left school at 18 and achieved the equivalent of sixth form. She said she had worked as a dancer from the age of 18 or 19 and confirmed that she was well enough to be interviewed. The judge noted that the appellant confirmed she did not have any medical conditions although she had attended a psychiatrist once or twice; no evidence of that had been produced. The judge found that in the evidence before him she did not have any diagnosed health condition.
6. Specifically, the judge took into account that the appellant had been found to be a victim of trafficking and the judge also took into account the child, vulnerable adult and sensitive appellant guidance, the Joint Presidential Guidance Note No. 2 of 2010 on Vulnerable Witnesses. There is no indication that the judge did not apply this throughout his assessment of the evidence and the determination.

7. The judge described at paragraph 32 that the appellant had been assisted in obtaining a visa on condition that she worked in the UK in a restaurant or “something like that” and she was told that she would have to pay money to cover her food and accommodation for three months but when she arrived she was told that she would have to pay £35,000 and cover expenses for herself. That amount very soon increased to almost £50,000. However, the judge noted that the appellant confirmed that since arriving in the United Kingdom she had paid off the debt. She said that her family had borrowed money to help them survive since she had been in the United Kingdom and she had acted as guarantor and that debt had not been repaid. It was dangerous for her should she return and those people, [to whom money was owed] were rich and powerful. She also said it would be hard for her to find work in Thailand and it would be dangerous because she would wish to change her gender.
8. At paragraph 33 the judge recorded that in fact it was the mother, rather than the appellant, who had borrowed money from someone by the name of W and the family home had been used to guarantee the loan. The judge also noted that the appellant maintained that she had borrowed money and still owed between £8,000 to £10,000 but this was borrowed from someone called N from whom she had not heard from for a long time and when she had told her that she would not be able to do anything about transferring the money to her she had said “OK never mind”. The judge also recorded that since the initial amount of money had been borrowed from W her mother had not borrowed any more from him but had borrowed from neighbours.
9. The judge at paragraph 35 to 36 set out the legislative provisions in relation to the Council of European Convention on Action Against Trafficking in Human Beings “The Trafficking Convention” or “ECAT”. The judge also set out the Convention definition of trafficking in human beings.
10. The judge proceeded from paragraphs 37 to 57 to assess whether the appellant was at risk on return to Thailand of re-trafficking and considered **AZ (trafficked women) Thailand CG [2010] UKUT 118** and the appellant’s circumstances therein finding that the appellant was not at risk of re-trafficking on return to Thailand. The judge also proceeded to consider the appellant’s rights in relation to Article 8 but dismissed the appeal on both protection and human rights grounds.

Application for Permission to Appeal

11. The appellant challenged the determination of the First-tier Tribunal Judge on two grounds:
 - (i) Material Misdirection of Law and DiscriminationThe Tribunal rejected the appellant’s protection and human rights appeals relating to discrimination owing to her gender identity. The determination noted that transgender people in Thailand could not change their gender on their identity documents but held that this “did

not assist her” (paragraph 57). There was no indication of a legal basis for this finding and it failed to make findings on her inability to change her title or her inability to marry a man. The correct legal test as set out in the skeleton of 6th November 2018 (paragraphs 17 to 18 and 25 to 29) had not been identified. The determination failed to follow the correct procedure in identifying the correct legal tests and making the necessary findings of fact for each ground. It was important to consider whether she was a vulnerable person and had the correct tests been applied the appeal would have been allowed. It was asserted that the appellant feared discrimination and this discrimination constituted persecution because of the active concealment of her identity by the State contrary to Article 9(2)(b) and (f) of the Council Directive 2004/83/EC.

2. *Acts of persecution as qualified in paragraph 1 can inter alia take the form of*

...

(b) *legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;*

...

(f) *acts of a gender specific or child specific nature.”*

Thus, persecution did not only involve violence; the discrimination would breach her human rights because:

- (a) it breached her right to privacy by forcing her to disclose to others her birth biological sex;
- (b) it denied her own official identity; and
- (c) it breached her right to official recognition of her gender identity which was achieved in the UK contrary to *Goodwin v United Kingdom* 28957/95. *Goodwin* held, at paragraph 90 that the very essence of the Convention is respect for human dignity and human freedom and that under Article 8 of the Convention, protection is given to the personal sphere of each individual including the right to establish details of their identity as individual human beings. In the 21st century the right of transsexuals to personal development and to physical and moral integrity in the full sense enjoyed by others in society cannot be regarded as a matter of controversy.

The unsatisfactory situation in which post-operative transsexuals lived in an intermediate zone as not quite one gender or the other was no longer sustainable. It was found at paragraph 93 of *Goodwin* that there had accordingly been a failure to respect private life under Article 8. The grounds cited *Ullah v The Special Adjudicator* [2004] UKHL 26 which held at paragraph 50 that

“It will be apparent from the review of Strasbourg jurisprudence that where other Articles may become engaged a high threshold test will always have to be satisfied. It will be necessary to establish at least a real risk of a flagrant violation of the very essence of the right for other Articles could become engaged.”

Further, *R (C) v Secretary of State for Work and Pensions* [2017] UKSC 72 emphasised the centrality of gender in any individual’s sense of self holding in relation to gender dysmorphia at paragraphs 28-29

“Those of us who, whatever our occasional frustrations with the expectations of society or our own biology, are nevertheless quite secure in the gender identities with which we were born, can scarcely begin to understand how it must be to grow up in the wrong body and then to go through the long and complex process of adapting that body to match the real self. But it does not take much imagination to understand that this is a deeply personal and private matter; that a person who has undergone gender reassignment will need the whole world to recognise and relate to her or to him in the reassigned gender; and will want to keep to an absolute minimum any unwanted disclosure of the history. This is not only because other people can be insensitive and even cruel; the evidence is that transphobic incidents are increasing and that transgender people experience high levels of anxiety about this. It is also because of their deep need to live successfully and peacefully in their reassigned gender, something which non-transgender people can take for granted.”[28]

R(C) held that the European Court of Human Rights in *Goodwin* made the important point that gender identity goes to the heart of a person’s sense itself and at [29] “the way in which the law and officialdom treat people who have undergone gender reassignment is no trivial matter.

(ii) Inadequate reasons on trafficking

The second ground asserted the judge gave inadequate reasons for finding the appellant was not at risk of trafficking particularly from new traffickers. The fact that she had already been trafficked was a serious indication of future persecution. Article 4(4) of Council Directive 2004/83/EC. As set out in *AZ (Trafficked Women) Thailand CG* [2010] UKUT 118, former victims of trafficking are even more vulnerable to re-trafficking.

Grant of permission to appeal

12. Permission to appeal was granted on the basis that it was arguable that having stated that he needed to consider the position of transgender people in Thailand and outlined the background evidence the judge failed to make any findings on the issue and some consideration needed to be given to the legal position for transgender people in Thailand.

13. The grant stated that the second point on permission was less arguable because the judge gave comprehensive reasons for finding that it was likely that the appellant no longer owed a debt to those who trafficked her to the UK but it was arguable that the judge failed to consider whether she was someone who showed characteristics that might render her vulnerable to re-trafficking.

The hearing

14. At the hearing before me, Mr Sheikh submitted that the First-tier Tribunal had not engaged with the first ground. The fact that the appellant could not change her legal gender or title or marry a man in Thailand was central to her claim and this was relevant to the asylum claim. It was also a breach of Article 8 because those issues were relevant to her reintegration. It has been established that she could not be required to lie but the State of Thailand perpetuated a lie in which she was required to acquiesce. If she was required to carry a card saying she was a man that would be very humiliating for her.
15. In response, Mr Clarke relied on *HJ (Iran)* [2010] UKSC 31 and noted that the judge had considered risk of persecution at paragraph 57 and Article 8. In relation to asylum the appellant had relied on Article 9 because of an active concealment of identification but the grounds did not deal with the *threshold* of persecution and that according to Article 9(1A) needed to be sufficiently serious (check). There is a threshold. *BF (Tirana – gay men) Albania CG* [2019] UKUT 00093 (IAC) confirmed that the fact that laws were not in place to allow same sex marriage was not enough to constitute persecution. At paragraph 47 of the determination it was clear that the judge had taken into account the cumulative effects in relation to those who identified as transgender in Thailand and the judge had made specific findings at paragraph 48. The judge had looked at the change in identify and the challenge was purely on the singular extraction from Article 9 without appreciating the context and threat held which was not addressed in the grounds of appeal.
16. In relation to the Article 8 findings the judge had at paragraph 51 considered the Rules and considered *Kamara v SSHD* [2016] EWCA Civ 813 finding no very significant obstacles to reintegration and those findings were not challenged. The last section of paragraph 57 did consider her sex change operation and ability to marry which was challenged but that was a proportionality assessment and it was open to the judge to give weight to the relevant factors.
17. The determination was sustainable and there was nothing which was compelling circumstances outside the Immigration Rules.

Analysis

18. Article 9 (2) of the Council Directive 2004/38/EC was set out in the grounds as above and Article 9(1) is incorporated in the discussion of *HJ (Iran)* [2010] UKSC 31 below. The Supreme Court in *HJ*, at paragraph 12, emphasised that the Convention (relating to the Status of Refugees 1951) does not define

persecution, but recognised that it is a powerful word and further, at paragraph 15 explored the limitations of the Convention as follows:

“12. The Convention does not define “persecution”. But it has been recognised that it is a strong word: *Sepet and Bulbul v Secretary of State for the Home Department* [2003] UKHL 15, [2002] 1 WLR 856, para 7, per Lord Bingham. Referring to the dictionary definitions which accord with common usage, Lord Bingham said that it indicates the infliction of death, torture or penalties for adherence to a belief or opinion, with a view to the repression or extirpation of it. Article 9(1)(a) of the EC Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees (“the Qualification Directive”) states that acts of persecution must

“(a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights ... or
(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).”

In *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473, para 40, McHugh and Kirby JJ said:

“Persecution covers many forms of harm ranging from physical harm to the loss of intangibles, from death and torture to state sponsored or condoned discrimination in social life and employment. Whatever form the harm takes, it will constitute persecution only if, by reason of its intensity or duration, the person persecuted cannot reasonably be expected to tolerate it.”

...

15. The guarantees in the Universal Declaration are fundamental to a proper understanding of the Convention. But the Convention itself has, as the references in para 12 show, a more limited purpose. It is not enough that members of a particular social group are being discriminated against. The contracting states did not undertake to protect them against discrimination judged according to the standards in their own countries. Persecution apart, the Convention was not directed to reforming the level of rights prevailing in the country of origin. Its purpose is to provide the protection that is not available in the country of nationality where there is a well-founded fear of persecution, not to guarantee to asylum-seekers when they are returned all the freedoms that are available in the country where they seek refuge. It does not guarantee universal human rights. So the conditions that prevail in the country in which asylum is sought have no part to play, as matter of legal obligation binding on all states parties to the Convention, in deciding whether the applicant is

entitled to seek asylum in that country: *Januzi v Secretary of State for the Home Department* [2006] UKHL 5, [2006] 2 AC 426, paras 16, 46. As Laws LJ said in *Amare v Secretary of State for the Home Department* [2005] EWCA Civ 1600, [2006] Imm AR 217 para 31:

“The Convention is not there to safeguard or protect potentially affected persons from having to live in regimes where pluralist liberal values are less respected, even much less respected, than they are here. It is there to secure international protection to the extent agreed by the contracting states.”

16. Thus international protection is available only to those members of the particular social group who can show that they have a well-founded fear of being persecuted for reasons of their membership of it who, owing to that fear, are unwilling to avail themselves of the protection of their home country. Those who satisfy this test cannot be returned to the frontiers of a territory where their life or freedom would be threatened on account of their membership of that group: article 33(1). To be accorded this protection, however, the test that article 1A(2) sets out must first be satisfied. As Lord Bingham of Cornhill said in *Januzi v Secretary of State for the Home Department* [2006] 2 AC 426, para 5, the words “owing to well-founded fear of being persecuted for reasons of ... membership of a particular social group” in the definition of “refugee” express a causative condition which governs all that follows.

Well-founded fear: the causative condition”.

19. At Paragraph 16 of *Januzi* [2006] UKHL 5 the House of Lords held as follows

‘Secondly, acceptance of that rule cannot properly be implied into the Convention. It is of course true, as the appellants emphasise, that the preamble to the Convention invokes the Charter of the United Nations and the Universal Declaration of Human Rights, and seeks to assure refugees the widest possible exercise of the fundamental rights and freedoms affirmed in those documents. But the thrust of the Convention is to ensure the fair and equal treatment of refugees in countries of asylum, so as to provide effective protection against persecution for Convention reasons. It was not directed (persecution apart) to the level of rights prevailing in the country of nationality. The article on refugees in the Universal Declaration was authoritatively criticised in 1948 as “artificial to the point of flippancy” (see Roma Rights case, above, para 14), and influential though the Declaration has been it lacked any means of enforcement. The International Covenant on Civil and Political Rights 1966 and the International Covenant on Economic, Social and Cultural Rights 1966, compendiously referred to as “the International Bill of Rights”, are in truth not such, and had yet to be adopted when the Convention was made’

20. It can be seen from the above that the Supreme Court was persuaded that there is a particular threshold for persecution and the Refugee Convention has a limited purpose which does not extend to economic, social and cultural rights.
21. In the context of the findings made in this case can it be said that inability to have one's identity be classified, as a lack of respect for human rights which posed a threat to life or exposed the appellant to the risk of inhuman or degrading treatment or punishment? The reference in *Januzi* would suggest that cultural and social rights are not part of the protected convention rights. The violation of human rights does not have to be physical but it must be severe and even if, as held in *Goodwin* that it is fundamental to the identity of a person, in order to reach the level of discrimination which would amount to persecution the threshold must be high. This must apply equally to rights both under the Refugee Convention and the European Convention on Human Rights (Article 3). It is not enough that members of a particular social group are being discriminated against and the Convention was not directed to reforming the level of rights prevailing in the country of origin, as explained in *Horvath v SSHD* [2000] UKHL 37

'It is the severity and persistence of the means adopted, whether by the state itself, or factions within the state, which turns discrimination into persecution not the absence of state protection'.

22. The judge made findings in relation to the background material provided throughout the determination and specifically at [41] referred to the 2017 US Department State Report on Human Rights Practices with regard to the general risk faced by those who identify as transgender in Thailand and the risk of re-trafficking. The judge set out the personal details of the appellant throughout and particularly at paragraph 45 as follows:

"45. The Appellant will no doubt have the support of her family when she returns to Thailand. In her asylum interview she confirmed that at that stage she was speaking to her mother 2 or 3 times a week (ASQ 23). She also confirmed that when she was in Thailand she had lived with her mother, grandfather, grandmother and their families (ASQ 9). She also has a younger sibling (ASQ11). There was no evidence that her immediate family do not accept her identification as a woman. In her asylum interview the Appellant said that she began dressing as a woman when she was aged 15 (ASQ 178). She also said that her mother did not have any problems with her identification as a woman (ASQ 175). The Appellant does not appear to have experienced any particular difficulties in view of her gender reassignment in Thailand. When asked what problems she had experienced in her asylum interview simply referred to "bad remarks" from neighbours (ASQ 182)."

23. There was no medical evidence to suggest that the appellant was particularly vulnerable in view of her experience as a trafficked woman or as her wish to identify as a woman.

24. At paragraphs 47 to 48 the judge had this to say:

“47. I need to consider the position of those who identify as transgender in Thailand when assessing the likely impact of return on the Appellant. The risk to those who identify as transgender is dealt with in the 2017 report. Under the heading “Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity” (section 6) the report states that:-

‘No laws criminalise expression of sexual orientation or consensual same-sex sexual conduct between adults.

The LGBTI community reported that police treated LGBTI victims of crime the same as other persons except in the case of sexual crimes, where there was a tendency to downplay sexual abuse or not to take harassment seriously.

The law does not permit transgender persons to change their gender on identification documents, which, coupled with societal discrimination, limited their employment opportunities. The law prohibits discrimination ‘due to the fact that the person is male or female or of a different appearance from his/her own sex by birth.’ There was some commercial discrimination based on sexual orientation and gender identity’.

48. *The same report later deals with ‘Discrimination With Respect to Employment Occupation’ in relation to workers’ rights in section 7(d) in the following terms:-*

‘Discrimination with respect to employment occurred against LGBTI persons, ... Government regulations require employers to pay equal wages and benefits for equal work, regardless of gender. Union leaders stated the wage differences for men and women were generally minimal and were mostly due to different skills, duration of employment, types of jobs, as well as legal requirements, which prohibit the employment of women in hazardous work ...

Persons of diverse sexual orientations and gender identities faced frequent discrimination in the workplace, partly due to common prejudices and a lack of protective laws and policies on discrimination. A 2014 ILO report found discrimination at all stages of the employment process, including education and training, access to jobs, advancement opportunities, social security, and partner benefits. Transgender workers reportedly faced even greater constraints, and their participation in the workforce was often limited to a few professions, such as cosmetology and entertainment.’

When I look at all the evidence before me I am not satisfied that it is reasonably likely that the Appellant will be at any risk of being re-trafficked on her return to Thailand. The evidence is simply not there

*to substantiate the Appellant's claim. There is no medical evidence that she is a very vulnerable person. She has a supportive family. I do not accept it is reasonably likely that she is still in debt to those who trafficked her to the United Kingdom. It therefore follows that she is not at real risk of serious harm or inhuman or degrading treatment should she return to Thailand. There is no evidence that she would be perceived to be a lucrative investment for her original traffickers. She was able to leave their employment within a relatively short time of her arrival in the United Kingdom with little difficulty. No effort seems to have been made to force her to return to work during the time she has been here. Although I accept that she may have given evidence against those involved in her exploitation in the United Kingdom there is no evidence that this has caused her family any difficulties in Thailand. There is no evidence of witness intimidation and there is nothing from the authorities in the United Kingdom to suggest that those who were prosecuted (and presumably convicted) are likely to have any influence in Thailand. The Appellant will of course have no language difficulties on return. Her position can be contrasted with that of the Appellant in **AZ (Thailand)**. The appellant in that case had been abandoned by her mother when she was one year old and had been brought up by her paternal grandparents (who had since died). Her childhood was described as "deprived and abusive". She had no family support and had previously attempted suicide in Thailand as a result of which she was in hospital for a week. The Upper Tribunal had the benefit of evidence from the Helen Bamber Foundation (who described the Appellant as a 'very distressed young woman'). She was said to have made 'two serious suicide attempts' including one in the United Kingdom and to have 'long history of self harm'. She relied on a support network in the UK. Her position is significantly different to that of the current Appellant. I also consider that the Appellant will not be at risk more generally as a transgender woman. The background evidence is not there to support such a conclusion particularly in light of the Appellant's experiences as set out in the record of her asylum interview."*

25. The assertion that the judge made no findings in relation to her gender reassignment and identify is not sustainable. It is the practical effect that needs to be considered and that is what the judge assessed. The findings of the judge in relation to the background material were specifically that:

"the appellant does not appear to have experienced any particular difficulties in view of her gender reassignment in Thailand. When asked what problems she had experienced at her asylum interview she simply referred to "bad remarks" from neighbours (ASQ 182)"

26. It is implicit and self-evident that the judge concluded that the level for persecution had not been reached and that was after considering the personal

circumstances of the appellant noting that she would not be permitted to change her gender on identification documents and that there were some commercial and employment discrimination based on sexual orientation and gender identity. The Thai laws, as the judge found, did not criminalise expression of sexual orientation or consensual same sex conduct between adults.

27. *BF (Albania)* looked at same sex unions and the right to change one's legal gender in Albania and in the context of the homophobic atmosphere in Albania. In that case it was accepted that Albania had not reached the position of equality and in particular the court assessed the level of discrimination in Tirana and the discriminatory measures particularly with regard the legal, cultural and social restrictions on rights to or ability to enjoy a private and family life. At paragraphs 184 and 185 the Tribunal noted that same sex marriage was not provided for in Albanian law but there was no evidence which prevented cohabitation or the transfer of property and it was not suggested that there were any particular difficulties regarding living in a relationship caused by the lack of legal recognition. As such at paragraph 185 it was found that whether in isolation or cumulatively even in the homophobic environment of Albania that it was not considered that the level of discrimination on which the evidence suggested reached the level of having sufficiently serious consequences for the individual and did not therefore constitute persecution. As stated:

"184. Marriage between two men or its civil partnership equivalent is not provided for in Albanian law. There is no evidence that this prevents cohabitation or couples making their own arrangements to ensure, for example, transfer of property between them. We take note of the fact that Mr Pinderi was able to live in a relationship with another man whilst in Tirana. It is not said that they were unable to do so or met with any particular difficulties in that regard caused by the lack of legal recognition.

185. Whether considered in isolation or cumulatively, we do not consider that the level of discrimination which the evidence suggests exists reaches the level of having "sufficiently serious" consequences for the individual and does not therefore constitute persecution".

28. In line with *HJ (Iran)* and *BF (Albania)* the findings by the judge that the appellant "will not be at risk more generally as a transgender woman" were made and entirely legitimate (paragraph 48). The judge did take into account the cumulative circumstances and made an informed decision.
29. Nowhere in the grounds for permission to appeal had the appellant's representative addressed the points on the threshold required for persecution.
30. The findings by the judge at [50] whereby the judge dismissed the appellant's claim to international protection and under Articles 2 and 3 and 8 of the ECHR were without legal error. It is not arguable that the very exceptional circumstances required for a breach of Article 3 in relation to identity and same

sex marriage have been reached. Simply the discrimination did not reach the level consistent with persecution whether that is in relation to violence or otherwise as per Article 9 of the Council Directive 2004/83/EC.

31. In reality, the attack on the determination in relation to the Thai authorities' forcing the appellant to disclose her birth, sex and her official identity relates to an Article 8 challenge and as Mr Clarke pointed out the judge from paragraph 51 onwards carefully assessed the appellant's private life under Article 8 noting that the appellant had lived in Thailand until the age of 23 and that she left in 2014. The judge applied paragraph 276ADE finding that there were no very significant obstacles to her return and that she "will have no difficulty in reintegrating into society in Thailand" [53]. She had spent her formative life there, had lived there for most her life and was educated there. As the judge found

"There should be no cultural barriers to reintegration despite her gender reassignment. There is no medical evidence that she has any health problems which may impact on her ability to integrate. Her mother is still there and should be able to accommodate her. She has other relatives. ... the evidence is that she should be able to resume some form of private life in I do not consider she will face 'very significant obstacles' (a high test) to reintegration in Thailand" [53]

32. None of those findings in relation to Article 8 were challenged.

33. It is correct to state that the judge at paragraph 57 found,

"The appellant's wish to have a sex change operation in the UK is expressed in her first statement although understandable is not something which attracts much weight particularly as it would appear that this procedure is also available in Thailand albeit at a cost. Similarly the appellant's inability to change her legal identity from male to female in Thailand or to marry a man does not assist her."

34. It was, however, open to the judge to give weight to the relevant factors and to find that these did not fulfil the requirement of 'very significant obstacles' to return and were not capable of constituting compelling circumstances under the Immigration Rules. It has long been held that the State may control entry into its borders and Article 8 is not an unqualified right. Indeed as set out in **Ullah** at paragraph 50 "where other Articles may become engaged a high threshold test will always have to be satisfied".

35. Finally, turning to the second ground, it was asserted in the grounds for permission to appeal that the judge had failed to give reasons on the risk of re-trafficking which was a material error of law. It was submitted that further to Article 4(4) of the Council Directive 2004/83/EC the fact that an applicant had already been subject to persecution or serious harm, was a serious indication of a well-founded fear of persecution and further to *AZ (trafficked women) Thailand*

CG [2010] UKUT 118 at paragraph 150 former victims of trafficking were even more vulnerable.

36. I find the second ground of challenge is not well-founded. The judge gave comprehensive reasons for finding that it was likely the appellant no longer owed a debt to those who trafficked her to the UK. The judge made a series of comprehensive findings specifically referring to *AZ (trafficked women)* and also to *AUJ (trafficking no conclusive grounds of decision) Bangladesh* [2018] UKUT 00200 where it was held that an appellant's claim that he was trafficked or is a victim of modern slavery in the past may be relevant in reaching a decision in whether his removal would be a breach under the Refugee Convention. The judge indeed set out various ways in which that might be the case.
37. At [38] the judge noted that *AZ* identified that not all will be at risk of serious harm on return and the risk would depend on various factors and should be assessed on a case by case basis which is exactly what the judge did including the age, marital status, domestic background, educational level, qualifications and work experience of the appellant. The judge outlined the key guidance in *AZ* and followed it. Anti-trafficking legislation was implemented in Thailand and yet it was identified that Thailand was classified as the Tier 2 country for the purposes of US Trafficking Victims, Protection Act. However, the judge specifically noted that the appellant had been previously trafficked and referred to the expert report and identified that the burden of proof was on the appellant to show that she was at real risk on return of serious harm.
38. The judge took into account the background material at [41] and [42] which included the creation by Thailand of specialised anti-trafficking law enforcement divisions and the prosecution and conviction of more traffickers. That said the judge realised that there were issues for those who were trafficked to Thailand. At [43] the judge detailed his reasons for finding the appellant was no longer at risk of re-trafficking. The appellant had given a confusing and contradictory account of the debts she claimed were due not least that she had never produced the contract referred to her in her asylum interview even though she said that both her mother and she had signed it; to add to the confusion in her asylum interview she had said that she was in debt with W but then in fact it was her mother that had borrowed from him and indeed the mother was still in her house which had been said to have been the guarantee. There was no evidence from the mother [44] and there were no real efforts even if money were owed to have collected the money by anyone in Thailand. Indeed, the lender and the appellant had not been in contact for three years and there were no threats. The judge found that the appellant would have the support of her family when she returns [45] and there was no indication that her immediate family did not accept her identification as a woman.
39. The judge specifically factored in whether she was vulnerable in view of her experience as a trafficked woman [46] and gave sound reasons for distancing

the findings from the matter of the expert report. For all these reasons together with the findings I have already alluded to at paragraph 47 and 48, the judge made a specific finding that she would not be reasonably likely to be at risk of re-trafficking on return to Thailand and that “the evidence is simply not there to substantiate the appellant’s claim”. The judge found the appellant was “able to leave their employment within a relatively short time of her arrival in the United Kingdom with little difficulty. No effort seems to have been made to force her to return to work during the time she has been here”. ... “there is no evidence of witness intimidation and there is nothing from the authorities in the United Kingdom to suggest that those who were prosecuted (and presumably convicted) are likely to have any influence in Thailand.

40. The judge detailed why this case was different from that of *AZ (Thailand)* and, concluded for the sound reasons identified above that the appellant could not avail herself of international protection on the basis of being re-trafficked.
41. For the reasons I have given I am not persuaded that there was any material error of law in the decision and the decision of First-tier Tribunal Judge Cary shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Helen Rimington*

Date 6th August 2019

Upper Tribunal Judge Rimington