



IAC-AH-SAR-VI

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

**Appeal Number: PA/12514/2019 (V)**

**THE IMMIGRATION ACTS**

**Heard Remotely by Skype at Field House  
On 23 November 2020**

**Decision & Reasons Promulgated  
On 09 February 2021**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**WC  
(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Ms S Walker, Counsel

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals against the First-tier Tribunal's decision which dismissed her appeal against the Secretary of State's decision on 30<sup>th</sup> November 2019 to refuse her asylum, humanitarian protection and human rights claim under the European Convention of Human Rights. The grounds of appeal set out that the appellant was from Thailand and a transgender woman. It was accepted that she was a victim of trafficking with a positive conclusive grounds decision and that she was in a

relationship with a British citizen. On 14<sup>th</sup> December 2016 the appellant had claimed to be a victim of trafficking.

2. The grounds of appeal against the First-tier Tribunal decision set out the appellant's history and that she had travelled to South Africa where she stayed for three or four years to work in the sex trade and when she returned to Thailand she was attacked by her father and stabbed with a broken bottle leaving scarring and broken bones. Her account of being attacked by her father was rejected by the Home Office but accepted by the First-tier Tribunal who found the medical report produced was "supportive of her account of being attacked by her father in the past" (paragraph 29).
3. Her travel to the United Kingdom was arranged by someone called K who also arranged her travel to South Africa. She was loaned £32,000 (which she has since repaid) to pay for her travel to the United Kingdom and she entered the UK in 2012 with a transit visa, remained and had worked in the sex trade as an escort.

The grounds for permission to appeal.

4. There were three grounds of application.

Ground 1.

5. At paragraph 25 of the decision, the First-tier Tribunal Judge placed weight on the Country Information Note on Thailand, dated 24<sup>th</sup> October 2019, citing the Borgen Report that there had been progress in reducing human trafficking and the Judge found that "the Thai government had made significant efforts to eliminate trafficking". That sufficed for the judge to find that the situation was much improved. That finding, however, was not properly reasoned and appeared to depart from the country guidance of **AZ (Trafficked Women) Thailand CG [2010] UKUT 118** and ran counter to settled law that very clear and cogent reasons needed to be given for departing from country guidance.
6. The First-tier Tribunal made no reference to the 2019 Trafficking in Persons Report provided at A/ B 194 and referred to in written and oral submissions and which identified that Thailand remained on the Tier 2 watch list; this was the same designation it had when **AZ (Trafficked Women) Thailand CG** was decided. This indicated that the situation was not "much improved".
7. The judge did not explain why the Country Information Note on Thailand was preferred to the 2019 Trafficking Report or explain why less weight was placed on this report before finding "the situation is much improved from 2010" at paragraph 25. The failure to do so amounted to an error of law.
8. At paragraph 26 the judge noted a clear example of progress since 2010, namely that the government was providing victims of trafficking with assistance and accommodation, education and finding employment and financial aid. The judge did not cite objective evidence as the basis for this but rather tracked the Country

Information Note cited in the refusal letter. As a transgender woman the appellant would not be able to avail herself of shelters provided by the government because as recorded in the submissions “shelters for victims of trafficking did not provide specialised care to boys and LGBTI victims and in addition authorities required transgender victims to stay in shelters based on their sex assigned at birth”. As a transwoman the appellant would not be able to access the government shelters. The judge erred in failing to consider the significant objective evidence.

9. Furthermore, at paragraph 26, the judge found that in Bangkok “the transgender community is thriving and would offer support”. The judge did not set out the objective evidence relied upon that the transgender community in Bangkok provided support to victims of trafficking. The refusal letter set out that Bangkok was fairly tolerant and there was a welcoming nightlife but it was not argued by the respondent that such entertainment amounted to a protective factor.
10. At paragraph 27 the judge adopted the findings of the Borgen Project set out in the refusal letter at paragraph 10 that “most trafficking cases are facilitated by individual and local level networks of friends, family members and former victims” and found that the appellant would be unlikely to be re-trafficked but did not go on to consider whether she would be re-trafficked by a new network of traffickers given that she has previously been trafficked.
11. Such errors were material and in particular it was noted that the appellant was unmarried, her domestic background was that her father had been violent towards her, she had a college education but no professional experience having only ever worked as a sex worker and she would not be able to access government sanctioned shelters.

#### Ground 2

12. This asserted that the judge had erred in failing to take into account material evidence of fact when considering whether her removal breached her Article 8 rights.
13. The judge considered that she was not in a genuine relationship but placed little weight on BH’s mother’s evidence. Her evidence was not such that the appellant had only met her once and the letter stated “they invited A ‘to come over Christmas 2018 and from then till now some time she came over to visit and stayed with us too’”. It was evident that she had met the mother more than once. The judge noted that the statement was littered with grammatical and spelling errors and that the mother could have given evidence by Skype as she was unable to attend in person but placed less weight on the letter given by the mother due to the failure of her to apply to give evidence by Skype and as it was unlikely such an application would be fruitful; that amounted to unfairness.
14. The judge made no reference to the extensive evidence that the appellant and BH wanted to marry but were unable to do so as they did not have a certificate copy of her passport.

15. The judge made no reference to the appellant's bank statements which featured both the appellant's name and Mr BH's name and that they were living in Huntingdon, rather the judge placed weight on the absence of photographs. Photographs were provided to the respondent and the appellant was no longer in possession of them but the judge's concerns were not raised with the appellant which was a breach of the principle of procedural fairness.

#### Ground 3.

16. The judge made a material error by finding that the appellant and her fiancé were dishonest when they told the Tribunal that their letting agency knew they were living together in the property. The judge at 33 stated:

*"The letting agency would open itself up to difficulties if it were to permit an illegal entrant to the UK to rent a property. An agency would be well aware of the ramifications of permitting someone to live at the property in breach of this clause. This evidence was clearly a lie by the appellant".*

Similarly, the evidence of Mr BH was rejected as he told the letting agency that she would be living with him. At paragraph 34 that was found not to be credible.

17. The court had repeatedly urged the Tribunal to take care when making a finding of deliberate dishonesty, the **Shen (Paper appeals; proving dishonesty)** [2014] UKUT 236 (IAC).
18. Both the appellant and her partner stated that they had informed the letting agency that they were living together in the apartment and this was not a matter raised by the respondent in the refusal letter, nor did the judge indicate during the hearing she was concerned that this evidence was not truthful. By not providing the appellant with an opportunity to provide further oral evidence the judge made a material error of law.

#### Grant of Permission

19. Permission to appeal was granted by Upper Tribunal Judge Kekić stating when finding the availability of Thai government support to victims of trafficking the judge arguably erred in failing to have regard to the fact that the individuals have to stay in shelters of the sex assigned to them at birth and that the judge arguably departed from **AZ (Trafficked Women)** without giving clear reasons and she failed to consider the 2019 Trafficking in Persons Report which had indicated that Thailand had the same designation as in **AZ (Trafficked Women)**, that is Tier 2 watch list. Judge Kekić also found that it was arguable the judge failed to consider the relevant factors set out in the grounds.

#### The Hearing

20. At the hearing before me Ms Walker expanded on her written submissions advancing that although the judge addressed **AZ (Trafficked Women)**, she did not consider the relevant factors. In particular, there was no evidence cited that

transgender issue had been taken into account when considering the government shelters' availability. In sum, a careful examination of the material factors had not been undertaken. The judge had stated the appellant would be able to find work but although she was college educated she had been hitherto a sex worker and it was not clear on what basis that she could draw on a professional background. Nor was her domestic and violent background drawn into the analysis. She could receive only very limited support from the mother.

21. In relation to Article 8, in particular at paragraph 32, no weight had been placed on the letter from the mother but at that particular point the video Skype facilities were not generally available and it had been drawn to the Tribunal's attention that the mother was ill herself and unable to attend court. The spelling errors in the mother's letter should not be considered to be relevant, although Ms Walker accepted that there was no medical evidence that the appellant's mother could not come to court because of the responsibilities she had for her husband who was disabled. Nor was any consideration made by the judge of the efforts the couple had made to marry and their bank statements and plane tickets. Although there was a lack of photographs there was reference to photographs in the bundle.
22. In relation to findings of dishonesty very careful steps needed to be taken to the court when a finding of dishonesty was made.
23. Ms Isherwood submitted that there was no material error of law. She argued that there was a lack of detail in support of the relationship and none of the witnesses had attended court. They had said that they were a couple but the appellant and her said partner had continued to live in a property claiming a single person's discount and that was a clear case of dishonesty.
24. In relation to ground 1 the bulk of Ms Walker's submissions were made in relation to the fact that Thailand remained in the Tier 2 watch as far as trafficking was concerned but there was clear evidence that Thailand was undertaking various improvements and making an effort to assist victims of trafficking. Ms Isherwood stated that paragraphs 24, 25 and 26 looked at the individual factors in relation to the Thai government's efforts and the relevant factors of the appellant. The judge acknowledged that there was a Gender Equality Act and stated that it was "not impossible to find work". At paragraph 28 the judge found clearly that the appellant was able to relocate to Bangkok and the father was not looking for her and therefore there would be no interest from the traffickers in her.

### Analysis

25. Unfortunately Ms Isherwood was hampered by her inability to access the paper file but the appellant's representative's skeleton argument for the First-tier Tribunal was in the file before the court.
26. As the judge indicated at paragraph 3 of her decision the appellant's claim was that she had a well-founded fear of persecution in Thailand on the basis of her membership of a particular social group, namely as a transgender woman. The

appellant also claimed humanitarian protection and maintained her rights under Articles 2, 3, 4 and 8 of the European Convention on Human Rights would be breached if she returned to Thailand. At paragraph 23 the judge stated that the real question to determine is whether the appellant had shown that there was a real risk of persecution for the appellant as a result of her transgender status if she were returned to Thailand?

27. That real question was not addressed by the Judge. Although it was not challenged in specific terms, the failure to address that issue was relevant to the findings made by the First-tier Tribunal Judge when applying **AZ (Trafficked Women) Thailand CG**. As found in **AZ (Trafficked Women)** not all will be at risk of serious harm on return and the risk would depend on a number of factors which must be assessed on a case by case basis. "Relevant factors will include the age, marital status, domestic background, educational level, qualifications and work experience of the appellant. The availability of employment and a familial or other support network will also be significant factors". Various factors relating thereto were set out in the skeleton argument on behalf of the appellant before the First-tier Tribunal.
28. I am not persuaded that the judge failed to take into account the country guidance that has been promulgated since 2010 including the Country Information Note on Thailand: Trafficking dated 24<sup>th</sup> October 2019 and the US State Department Trafficking in Persons Report 2019 in support of the finding that "the Thai government has made significant efforts to eliminate trafficking" at paragraph 25, because those reports do identify that the situation has changed, albeit that Thailand remains in the Tier 2 watch category. The judge, however, did not enlist all material relevant factors in the analysis.
29. The judge's failure to address clearly the ground in relation to the appellant's transgender status was one of the factors that was relevant in two differing ways, that is discrimination for example in employment, and access to protective shelter. When the judge made findings at paragraph 26 in relation to the transgender point it was merely stated:

*"I am conscious that transgender people still suffer from some discrimination although in 2015 legislation was passed to prevent this (Gender Equality Act) which shows a positive move in the right direction. I am not told that it is impossible for an educated healthy transgender adult to work"*.
30. This does not actually address and make a finding on discrimination or the level of discrimination that the appellant might experience. Even if the discrimination was insufficient cumulatively to find persecution, the judge was obliged to make a finding in that regard. Nor does the judge make a clear finding in relation to whether the appellant could find work.
31. Further, as Ms Walker pointed out the high point of her case was that the judge relied on the finding that:

*"The government provides victims of trafficking with assistance and accommodation, education and finding employment and financial aid. With such support available to*

*her, I find this will provide a protective factor, particularly if she were return to Bangkok, away from her province of Lampang from where she was trafficked, where the transgender community is thriving and would offer support”.*

32. The judge however failed to address the relevant points that were set out in the appellant’s skeleton argument such as that transgender people could not change their legal gender and same-sex marriages were not legal. The inability to change legal gender was relevant.
33. The Trafficking in Persons Report 2019 by the US Department of State found that:

*“The shelters provided by Ministry of Social Development and Human Security ..... shelters for victims of trafficking did not provide specialised care to boys and LGBTI victims; in addition authorities require transgender victims to stay in shelters based on their sex assigned at birth”.*
34. As the skeleton argument pointed out, the legal gender recognition in Thailand (a legal policy and review) states that “as it is impossible for a transgender person to amend the gender marker or name title on those documents, passports too are based on a transgender person’s sex assigned at birth rather than their gender identity”.
35. The skeleton argument of Ms Walker had added that in relation to persecution less overt measures may suffice such as the

*“Imposition of serious economic disadvantage, denial of access to employment, to the professions, or to education or other restrictions on the freedoms traditionally guaranteed in a democratic society ... Although mere discrimination is probably not enough evidence of discrimination will make it easier to demonstrate persecution”.*
36. The judge therefore, when finding that a shelter would be available for the appellant in Bangkok where the judge found she could relocate, omitted to address a key plank of the argument raised regarding her transgender status and failed to acknowledge that the appellant may not be able to access a shelter, or may be discriminated against in an ‘assigned shelter’ and may be unable to access further services.
37. This was a material error of law.
38. In relation to Article 8 I am not persuaded that the judge erred in the approach to the witness statements or credibility of the appellant and Mr BH when considering the tenancy agreement.
39. It was open to the Judge to criticise the evidence of BH’s mother as she failed to attend. Indeed, Ms Walker accepted that there was no medical evidence before the Tribunal to the effect that the mother could not attend. The judge also pointed out that she referred to the relationship as ‘general’ rather than ‘genuine’ although poor grammar and spelling mistakes should not necessarily be held against a witness. The appellant would have been aware of the lack of photographs and it was open to the appellant to explain that absence during the hearing without prompting from the judge.

40. As the judge stated, she did not accept that the appellant had informed the letting agency that she did not have identity documents and no certified copy of her passport and they were content to permit her to live there. The judge rightly pointed out the difficulties that a letting agency would expose itself to if it were to permit an illegal entrant to the UK to rent a property. Further, the tenancy agreement made it clear at 8.5.1 that the premises could not be shared with anyone other than the tenant without the landlord's written consent which had not been obtained. As the judge stated "an agency would be well aware of the ramifications of permitting someone to live at the property in breach of this clause. This evidence was clearly a lie by the appellant".
41. The judge also noted that the appellant's said partner, Mr BH "went on to accept that he had falsely claimed a single person's council tax discount and had told the council that he was living alone. He then went on to state that he had told the council that the appellant lived there when he was on nightshift". The judge stated "I do not find that to be likely or honest evidence". It was open to the judge to find that Mr BH was claiming a 25% discount from the council on the basis that he was either lying to the council or effectively lying to the Tribunal. In my view, it was open to the judge to find that she was not persuaded by the relationship bearing in mind the lack of evidence which was highlighted in the refusal letter.
42. Nonetheless, on the basis that the protection claim findings are unsound this may well have an impact on the Article 8 findings and, owing to the reasons for rejecting the mother's evidence, it may well be that she is able to attend a further hearing remotely. I therefore set this decision aside. I preserve none of the findings and remit the matter to the First-tier Tribunal for a hearing de novo.
43. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

**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 Rymington*  
Upper Tribunal Judge Rymington

Date 1<sup>st</sup> January 2021