



IAC-FH-CK-V1

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

Appeal Number: PA/13132/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 February 2020**

**Decision & Reasons Promulgated  
On 22 April 2020**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**JA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms J Smeaton, Counsel, instructed by Kesar & Co Solicitors  
For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

**DECISION AND REASONS**

The appellant is a citizen of the Philippines born in 1983. She arrived in the UK with entry clearance as a visitor on 26 July 2015. She claimed asylum on 20 November 2017.

That protection claim was refused by the respondent in a decision dated 2 November 2018. The appellant appealed against that decision and her appeal came before First-tier Tribunal Judge Talbot at a hearing on 7 June 2019. He dismissed the appeal on protection and human rights grounds. However, he found the appellant to be a credible witness and that she had been a victim of

trafficking. He dismissed the appeal because, to summarise, he concluded that she would not be at risk of persecution or Article 3 harm on return to the Philippines, either by reason of re-trafficking, or retribution from those involved in her previous trafficking.

Permission to appeal against Judge Talbot's decision was refused by a judge of the First-tier Tribunal and then a judge of the Upper Tribunal. On a *Cart* judicial review of the Upper Tribunal's refusal to grant permission, the decision to refuse permission was quashed. Thereafter, the Upper Tribunal granted permission in the light of the decision of the High Court.

Before setting out the grounds of appeal and submissions, I summarise Judge Talbot's decision which sets out the appellant's circumstances and the basis upon which the appeal was advanced.

### ***Judge Talbot's Decision***

The appellant's written and oral evidence was that she was one of eight children whose parents struggled financially to bring them up. She was raised by an aunt but moved back with her parents when she went to High School. She obtained a scholarship to work in the school office to cover her fees and expenses and then went to university, gaining a BA in Science for Secondary Education. She then obtained employment as a teacher in the Philippines.

She married in 2004 and moved to another area where she again worked as a teacher. She had a daughter born in 2004 and a son born in April 2006. Their daughter was diagnosed as being profoundly deaf and they were advised that treatment would require a cochlear implant which would involve very expensive surgery which they could not afford. They would also have to pay for her to be educated at a special school which, again, they could not afford. The appellant's husband, therefore, decided to work in Canada to assist with these financial issues. He left for Canada in 2006 where he worked and sent money back for the family. He also visited his family in the Philippines but the last time the appellant saw him was when he visited in 2010. Their marriage broke down when she discovered that he had committed adultery.

It was at that time that the appellant realised that she would have to work overseas in order to provide for her children. Her daughter's special educational needs were not being met. She found work as a teacher in Qatar and sent money back for the children who were being looked after by her husband's family in the Philippines. In 2014 the appellant returned to the Philippines because her in-laws were moving to Canada. By that time, her husband had completely stopped providing financial support. The appellant and the children then moved in with an aunt. She found teaching work but the income was insufficient to settle her daughter in a special school and fund their own accommodation.

In order to earn enough money to provide for her family the appellant found work as a private tutor for children in the UAE. Her children remained with her aunt. She flew to Dubai in 2014 and went to her place of work. It is not

necessary to provide further information in relation to the identity of the appellant's employers; suffice to say, that they were very wealthy.

The appellant said that she was badly abused by her employers. Rather than working as a tutor she was made to work only as a housekeeper for the family. Her passport and mobile phone were taken away and not returned. She was only allowed to call her family once a month from a landline in her employer's office. She needed to be able to communicate visually with her daughter in sign language as her daughter is both deaf and mute but she was only able to do this once, secretly, using an iPad. She had to work long hours and her salary was less than promised. She was treated rudely and disrespectfully by the family, including the children.

Although she tried to resign she was unable to because she was told that she had signed a two year contract (which she had never seen), and that if she resigned she would have to pay for her flight home and would not receive any outstanding wages. She was unsuccessful in seeking redress through the Philippines Overseas Labour Office.

In June 2015 she was told that the family were travelling to the UK and that she and other staff were to accompany them. The appellant was waiting for a replacement from the agency so that she could return home but she did not want the family to punish her for refusing to travel to the UK. She, therefore, agreed to go with them.

They arrived in the UK on 26 July 2015 and were driven to the family's residence in central London. The first time she went out with the family for shopping, another member of staff managed to escape. The appellant was told by one of her employers that the member of staff who had escaped was arrested by the police and that if she tried to escape the same would happen to her. Although she was not allowed to leave the house on her own, she managed to run away in August 2015 whilst throwing out the rubbish. She was chased by the caretaker but managed to get away.

She was helped by a Filipino woman she met at a bus stop who agreed to take her home. She stayed with her until September. She did not go to the police as she feared that she would be arrested and was scared that she would be sent to prison. She managed to contact an aunt through Facebook who put her in touch with a childhood friend living in the UK with whom the appellant stayed until December 2016. In December 2016 she moved into the house of a friend of her sister, where the conditions were less crowded.

Ultimately, through Kalayaan (a London-based charity for migrant domestic workers) she was referred to the Competent Authority under the National Referral Mechanism ("NRM") and was accepted on conclusive grounds as having been a victim of trafficking. The police were also contacted in order for the family that she worked for to be prosecuted. However, she was told in April 2017 that the police had closed the investigation. She had herself issued civil proceedings against the family in the High Court in London but those had not yet been served on the family.

The appellant fears that if she returns to the Philippines she would be unable to afford to support her children and would be obliged to work overseas again. Her fear is that she would then again become the victim of trafficking. In addition, she is worried that the recruitment agency may have put her on the blacklist for having deserted her employer. She is scared of the family that she used to work for, who have a powerful influence in the UAE and know where her aunt lives. The fact that she has taken proceedings against them adds to her fears. Her aunt, who is currently looking after the children, is only a pensioner with limited means and energy to continue caring for the children. Her siblings have their own families and are not providing any financial assistance.

Judge Talbot also heard evidence from a Mr RM. He is from the Philippines and has a work visa in the UK. He and the appellant started a relationship although he lives in Cornwall whilst she lives in the Home Counties. His evidence was that he thought that the appellant was suffering from depression. He also thought that if she had to return to the Philippines she would have to find work abroad again because it is difficult to support a family on a teacher's salary.

Judge Talbot found the appellant to be a "very credible witness" and noted that she had been accepted by the Competent Authority on conclusive grounds as having been a victim of trafficking. He further noted the extensive supporting evidence in support of that claim. He found that there was nothing in her evidence that would lead him to form a different opinion from that of the Competent Authority.

At paragraph 22 he referred to the appellant having submitted supporting evidence in relation to her circumstances back in the Philippines, which he said was consistent with her own evidence. That evidence included a statement from her aunt, Ms JJ, confirming that she has been caring for the appellant's children, but as a retired lady with limited means and health issues she struggles to continue looking after them. The agreement that she had with the appellant was that the money she has spent on looking after the children would be paid back once the appellant finds a job.

Ms JJ also confirmed that the children's father has not supported them for many years and that the appellant's siblings do not provide any financial support either. That witness also confirmed the appellant's daughter's disability and the appellant's desire to be in a position to pay for a specialist school and a surgical implant for her. There was also a psychological report in relation to her daughter.

Ms JJ was of the view that the appellant would again have to seek work abroad in order to support the children, and that she fears retribution from her traffickers.

Judge Talbot was satisfied that the appellant had given a true account of her past and current family circumstances in the Philippines.

He rejected the respondent's contention that the appellant, as a former victim of trafficking, is not a member of a particular social group. With reference to authority and the country background material, he found that as a former victim of trafficking from the Philippines, the appellant was a member of a particular social group. In that assessment, with reference to the background evidence, he concluded that the evidence clearly showed that trafficking of Filipino overseas workers is a significant problem, particularly for female domestic workers.

At para 25, Judge Talbot said as follows:

"I note that her evidence is somewhat inconsistent with regard to the nature of her fears on returning to the Philippines. Having heard directly from her, I am satisfied that her overriding concern is to be able to provide for her children. I am also satisfied that she has been profoundly affected by the appalling treatment that she received from her former employers who blatantly exploited her, trafficked her and kept her in domestic servitude. I accept that as a result this treatment, she genuinely fears being exposed to the same treatment again or being targeted by the recruitment agency or directly or indirectly by the UAE family for having escaped from their household."

At para 26 he said that the key issue was whether her fears were objectively well-founded in the light of all the evidence "which includes a wealth of background country materials". He found that it was clear from the background evidence that large numbers of Filipino nationals, including in particular female domestic workers, become victims of international human trafficking to a host of countries, notably to Gulf States like Kuwait and the UAE. He referred to the U.S. State Department Trafficking in Persons Report of June 2018 to the effect that an estimated 10,000,000 Filipinos reside or work abroad and that a significant number of these migrant workers are subjected to sex and labour trafficking. According to the report, traffickers, typically in partnership with local networks and facilitators, engage in illegal recruitment practices that leave migrant workers vulnerable to trafficking, such as charging excessive fees, producing fraudulent travel and contract documents, and confiscating identity documents.

He also referred to aspects of that report which he said give some credit to the Philippines government for seeking to address the problem. However, the report also notes that the government, whilst meeting the minimum standards for the elimination of trafficking, did not improve the availability and quality of protection and assistance services for trafficking victims.

After referring to *HD (Trafficked women) Nigeria (CG) [2016] UKUT 00454 (IAC)*, he said as follows at paras 28 - 30:

"28. I now need to apply such considerations to the specific position and circumstances in the instant case. This Appellant is a highly educated intelligent and resourceful lady. She also is a professionally trained school-teacher and has had several years' experience of teaching in the Philippines (as well as abroad in Qatar). Despite having been the victim of past exploitation, she is not a simple-minded or gullible person and, especially in the light

of her past experiences, is likely to be particularly cautious when assessing overseas job offers in the future (should she feel the need to work abroad again). If she decides instead to seek work in the Philippines, she has some 7 years of teaching experience in her home country which would surely give her some prospects of finding work, even if it will not allow her to earn enough to achieve her aims of enrolling her daughter into a special school and paying for her medical treatment. However, it would not leave her completely destitute and without means. All of these factors significantly reduce the risk of the Appellant finding herself in similar circumstances again.

29. The Appellant has said that she fears retribution from her former employers for having deserted their employment. However, whilst they may be highly influential in the UAE, they are not residents of the Philippines. As for the agency in the Philippines that recruited her, there is no evidence that the agency has sought to pursue her for breach of contract and in fact they may be very wary to do so for fear they could be reported to the authorities as being complicit in her trafficking (particularly as this has been formally recognised by the UK authorities). If the Appellant was to suffer harassment or threats from the agency, she could report them to the authorities and I note from the USSD Trafficking Report that the Philippines Government takes action to revoke licences of agencies found complicit in trafficking.
30. Taking all the evidence into account, I am not satisfied even to the lower standard of proof that the Appellant faces a real risk of persecution or serious harm either in the form of re-trafficking or retribution from those involved in her previous trafficking. I conclude that she does not meet the criteria for international protection under either the Refugee Convention or Article 3 of the European Convention."

Finally, at para 31 Judge Talbot dealt with Article 8 of the ECHR. He accepted that the appellant had established a private life in the UK and that her removal would constitute an interference of sufficient gravity so as to engage Article 8. He found, however, that she could continue her private life in the Philippines, where she has family members including her own two children, her aunt and her siblings and where she could seek work on the basis of her professional training and experience as a teacher. He found that there would not be very significant obstacles to her integration in her country of origin. He further concluded that there were no compelling or exceptional circumstances indicating that her removal would be disproportionate in Article 8 terms.

### ***The Grounds and Submissions***

The following is a summary of the grounds and submissions.

The grounds upon which permission was ultimately granted are twofold. Ground 1 argues that it was perverse of Judge Talbot to conclude that the risk to the appellant should she seek overseas employment would be significantly reduced because she was likely to be particularly cautious in the future and was not simple-minded or gullible. Her ill-treatment had nothing to do with her

failing to be cautious, nor whether she is simple-minded or gullible. The appellant had applied for a tutoring job that was appropriate to her qualifications and level of experience and she used what was, on the face of it, a reputable agency. Notwithstanding that, the appellant was ill-treated because the trafficking of women overseas from the Philippines was widespread, not because of any avoidable conduct on her part. The grounds rely on the U.S. State Department Trafficking in Persons Report dated June 2018 in terms of the extent of trafficking in the Philippines.

The grounds argue that instead of concluding that with greater care the appellant might avoid being re-trafficked, Judge Talbot should have assessed the future risk to her with reference to the country evidence and paragraph 339K of the Immigration Rules (“the Rules”). In that context he had failed to identify any “good reasons” as to why the persecution would not be repeated.

Ground 2 contends that in terms of avoiding persecution by remaining in the Philippines, Judge Talbot’s findings were inconsistent. Thus, he found that the risk of her being re-trafficked would be significantly reduced if she chose not to work abroad and to remain in the Philippines. However, that finding was inconsistent with him having earlier accepted evidence that she would be compelled to work abroad in order to try and provide for her children, one of whom has special needs. The grounds quote from para 15 of the appellant’s witness statement dated 31 May 2019 to the effect that the salaries on offer in the Philippines would mean depriving her children of a future with prospects, and that all her choices have been for her children’s wellbeing. The statement refers to inadequate social support in the Philippines and to her daughter being particularly vulnerable because her education and medical expenses are not free.

Quoting from Judge Talbot’s decision at para 22, and further at para 23 where he found that the appellant had given a true account of her past and current family circumstances, his conclusions were inconsistent.

In oral submissions, Ms Fijiwala accepted that Ground 1 was made out, although it was submitted that the error of law in that respect was not material. It was not accepted that Ground 2 was made out.

Ms Smeaton relied on her skeleton argument prepared for the hearing before me. The skeleton argument, for the most part, repeats the matters raised in the grounds, although emphasising that there was plainly a risk that the appellant on return to the Philippines would be compelled to seek work overseas again in order to provide for her children and would thus be at real risk of persecution. That risk could not be mitigated by her exercising extra caution, it was submitted.

As regards Ground 2, the skeleton argument refers to the unchallenged findings of fact made by Judge Talbot, including the finding that what she could earn in the Philippines would not allow her to earn enough to enrol her daughter in a specialist school or pay for her medical treatment. I observe at

this point that this was not an express finding by Judge Talbot, although I accept that it is certainly a finding that is strongly implied.

The skeleton argument then continues in arguing that Judge Talbot ought to have assessed the risk to the appellant of being re-trafficked based on the accepted facts of the appeal and the reality of the situation facing her on return, namely that she would be compelled to seek work overseas. Thus, there would be a risk of being re-trafficked. Her circumstances had not changed. The need to consider paragraph 339K of the Rules was emphasised.

Ms Smeaton argued that Grounds 1 and 2 were interlinked. Judge Talbot's reasoning was that she could avoid risk by exercising extra caution, and for that reason she would not be at risk. However, the result must therefore be that if she had to seek work outside the Philippines, she would be at risk.

In terms of Ground 2, the appellant's case was that she would have to work abroad as there would not be sufficient income to take care of her children's needs, in particular those of her daughter, if she worked in the Philippines. Judge Talbot accepted her evidence, including the background evidence. It was inconsistent to find that she would be able to remain in the Philippines and seek work such that she would not be destitute.

I was referred to *HD*, in particular at para 70, in terms of the need for an assessment of the particular personal circumstances of a victim of trafficking in the context of the background material.

It was argued that by a process of elimination, the appeal must succeed. Judge Talbot found that there was a risk for the appellant if she undertook overseas work, but that that risk could be avoided by exercising caution. His reasoning in terms of her ability to exercise caution is conceded to have been marred by error of law.

Ms Fijiwala said that notwithstanding the error identified in Ground 1, it was not accepted that the appellant would be at risk if she were to work abroad. That was not the effect of the FtJ's decision, it was submitted.

So far as Ground 2 is concerned, Judge Talbot had properly considered the facts and concluded that she could work in the Philippines as she had done so for seven years, notwithstanding that she would not earn enough to provide for her children in the way that she wanted to in terms of medical treatment, for example. At para 29 he found that there would be no risk to the appellant from her former employers (a matter which Ms Smeaton indicated was not challenged). It was submitted on behalf of the respondent that Judge Talbot did not find that the appellant would have to work abroad for her to support her children in terms of her disabled child in particular. He found that she would be able to remain in the Philippines and work there. At para 31 he found that she would have family members there, apart from her two children, being her aunt and siblings, and where she could work on the basis of her professional training and experience.

The appellant had been in the UK for four years and there was no evidence that her daughter went to a special school or was obtaining particular medical treatment, or that the appellant was sending money back to the Philippines for her care.

In reply, Ms Smeaton reiterated that the appellant was accepted to have been a victim of trafficking and escaped in 2015. She has not had permission to work in the UK and she could not, therefore, have been earning any money to send back to the Philippines.

Various aspects of Judge Talbot's decision were referred to and emphasised. In the light of those findings, it was submitted that if returned the appellant would be compelled to seek work abroad to provide for her eldest daughter.

On behalf of the appellant it was submitted that no further findings were needed in the light of the background evidence summarised by Judge Talbot at para 26. As regards efforts by the Filipino authorities to deal with trafficking, as was said in *HD* the question is not whether a receiving State has complied with any particular standards of conduct, but whether the result is such as to reduce the risk below that of real risk. Whilst the Philippines, like Nigeria, (as in *HD*), is a Tier 1 country in terms of efforts to tackle human trafficking, that does not mean that there is no trafficking and no risk. It was submitted that Judge Talbot's analysis and findings at paras 26 and 28 amount to a finding of risk, although his conclusion that that risk could be mitigated is perverse (as was conceded).

### ***Assessment and Conclusions***

It was conceded on behalf of the respondent that Judge Talbot erred in law for the reasons argued in Ground 1. I am also satisfied that Ground 2 is made out. Quite apart from what is contained in the appellant's witness statement, Judge Talbot said at para 25 said that he was satisfied that the appellant's overriding concern was to be able to provide for her children. At para 14, summarising the appellant's evidence, he said this:

"If she returned to the Philippines, she would be unable to afford to support her children and would be obliged to work overseas again and she fears that she would again become the victim of trafficking."

He unequivocally found that the appellant was a credible witness (paras 21 and 23).

The ineluctable conclusion from those findings is that the appellant would be driven to seek work abroad. It must also follow, therefore, that the conclusion that she could avoid persecution by working in the Philippines is inconsistent with the earlier findings.

The conclusion is irresistible that the errors of law identified by Grounds 1 and 2 do require the decision to be set aside. Neither party suggested that, in the absence of any further fact-finding that was needed, the decision could not be re-made in the Upper Tribunal.

In re-making the decision I start by referring to para 339K of the Rules, which states as follows:

“The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.”

Para 339K plainly does not establish that a person who has been subject to persecution or serious harm inevitably has a well-founded fear of persecution or real risk of suffering serious harm. However, it is a “serious indication” of such an outcome. There must be good reasons to consider that such persecution or serious harm will not be repeated.

The logic of the positive credibility findings is that the appellant would be driven to seek work abroad. Notwithstanding her education and experience, she was not able to avoid persecution previously. Having said that, it is unrealistic to contend that she would not be cautious in her search for employment abroad in order to avoid a risk of persecution. However, the appellant is plainly driven by the need to support her children and to provide the necessary care and treatment for her daughter, who, on the accepted facts, needs an expensive operation and has special educational needs which would require the appellant to earn more money than she could earn in the Philippines.

The background evidence is very clear in highlighting the risk of trafficking of persons from the Philippines. The evidence reveals that sophisticated methods are used by the traffickers, such as the use of illegal recruitment practices, fraudulent contract documents and the confiscation of identity documents.

Whilst it is for the appellant to prove her case, and as part of the overall burden of proof that would include establishing that para 339K of the Rules applies, I cannot find in the evidence, or in the arguments advanced by the respondent, any good reasons to consider that the persecution or serious harm that she was subjected to would not be repeated.

In those circumstances, taking into account the facts as found by Judge Talbot which are not infected by the errors of law, on the specific facts of this appeal I am satisfied that the appellant has established to the required standard that she has a well-founded fear of persecution for a Convention reason, namely as a member of a particular social group. In those circumstances, the appeal on asylum and Article 3 grounds must be allowed.

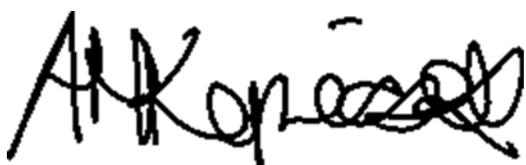
In the light of those conclusions, it is not necessary to go on to consider Article 8.

*Decision*

The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside, and the appeal is allowed on asylum and human rights grounds with reference to Article 3 of the ECHR.

**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 her or any member of her 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.



Upper Tribunal Judge Kopieczek

Date: 07<sup>th</sup> April 2020

**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent" is that appearing on the covering letter or covering email**