Neutral Citation Number: [2025] EWCA Civ 1677

Case No: CA-2023-002517
Case No: CA-2024-001971

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
Upper Tribunal Judge Gleeson and Deputy Upper Tribunal Judge Sills
UI-2023-002281
PA/52459/2022

AND

ON APPEAL FROM THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
Deputy Upper Tribunal Judge Symes
UI-2024-000974
PA/51946/2023

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2025

Before :

LORD JUSTICE BAKER
LADY JUSTICE ANDREWS
and
LORD JUSTICE JEREMY BAKER

- -

Between :

EAV (anonymity order made)	**Appellant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

And between :

GMP (anonymity order made)	**Appellant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -
- -

Sonali Naik KC and Shu Shin Luh (instructed by **Birnberg Peirce**) for the **Appellants**
Lord Murray of Blidworth (instructed by **Government Legal Department**) for the **Respondent**

Hearing dates: 26 and 27 November 2025

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Approved Judgment

This judgment was handed down remotely at 2pm on 19th December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Andrews:

INTRODUCTION

1. The appellants in these linked appeals are female nationals of the Philippines who were formerly trafficked for the purposes of domestic servitude from the Philippines to Saudi Arabia and from there to the UK. Each has the benefit of a finding by the National Referral Mechanism ("NRM"), which is the competent authority in the UK, that there are conclusive grounds that she was trafficked for those purposes. They contend that on return to the Philippines they would be driven by economic necessity to seek employment in the Middle East, thereby generating a real risk of being trafficked again, and that consequently they are "refugees" within the meaning of the 1951 Refugee Convention, and entitled to claim asylum in the UK.

2. Given that these are asylum appeals brought by individuals who are accepted to be vulnerable on account of their experiences as victims of modern slavery, it is a necessary and proportionate interference with the principle of open justice that they should be anonymised (as they were in the decisions of the First-tier Tribunal (FtT) and Upper Tribunal (UT)). As in the tribunals below, the name of the appellant in CA-2023-002517 shall appear as EAV and the name of the appellant in CA-2024-001971 shall appear as GMP. Any material from which they may be identified should be omitted from any report of this judgment and from any document (including skeleton arguments) which may become available to the public.

3. Both claims for asylum were rejected by the Respondent ("the SSHD"). EAV's appeal to the FtT succeeded, but on an appeal by the SSHD, a panel of the UT set aside that decision for a material error of law and, on remaking the decision, dismissed the appeal. GMP's appeal to the FtT was dismissed, and the UT dismissed her appeal against that decision.

RELEVANT LEGAL FRAMEWORK

Who is a refugee?

4. Article 1(A)(2) of the Refugee Convention defines a refugee as a person who:

> "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."

5. For any group to be considered a "particular social group" its members must share an innate or immutable characteristic (other than their risk of being persecuted) and have a distinct identity which will be perceived as different in society: see *Fornah v Secretary of State for the Home Department* [2006] UKHL 46; [2007] 1 AC 412. The Refugee Convention treats membership of a particular social group as being in all material respects equivalent to the other Convention reasons for persecution (race, religion, etc.) (*Fornah*, at [20])

6. As Lord Bingham stated in *Fornah* at [17]:

> "The text of article 1A(2) of the Convention makes plain that a person is entitled to claim recognition as a refugee *only where the persecutory treatment of which the claimant has a well-founded fear is causally linked with the Convention ground on which the claimant relies.* The ground on which the claimant relies need not be the only or even the primary reason for the apprehended persecution. *It is enough that the ground relied on is an effective reason.* The persecutory treatment need not be motivated by enmity malignity or animus on the part of the persecutor, whose professed or apparent motives may or may not be the real reason for the persecution. What matters is the real reason. In deciding whether the causal link is established, a simple "but for" test of causation is inappropriate; the Convention calls for a more sophisticated approach, appropriate to the context and taking account of all the facts and circumstances relevant to the particular case." [Emphasis added].

7. In the same case, Lord Rodger said at [75]:

> "… while it is not necessary that all members of the social group in question are persecuted before one can say that people are persecuted for reasons of their membership of that group, it is necessary that all members of the group should be susceptible to the persecution in question."

8. "Persecution" is not defined by the Refugee Convention, but its meaning was considered by the Supreme Court in *HJ (Iran) v Secretary of State for the Home Department* [2010] UKSC 31; [2011] I AC 596, a case on which both appellants relied. At [12] Lord Hope DPSC quoted from 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"), which 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)."

9. Lord Hope went on to quote a statement made by two of the members of the majority of the High Court of Australia (McHugh and Kirby JJ) in *Appellant S 395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473 at [40]:

> "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 if its intensity or duration, the person persecuted cannot reasonably be expected to tolerate it."

As Lord Collins JSC clarified in his judgment at [103] the reference to "being reasonably expected to tolerate" the harm in that passage was made in the context of what amounts to persecution and not in the context of a person taking action to modify their behaviour or characteristics so as to avoid persecution.

10. At [13] Lord Hope emphasised that in order to constitute "persecution" for the purposes of the Convention, the harm must be state sponsored or state condoned. He said that the failure of state protection is central to the whole system. The question is whether the home state is unable or unwilling to discharge its duty to establish and operate a system for the protection against persecution of its own nationals.

11. At [18] Lord Hope made it clear that attention must be focused upon what the applicant will actually do if he or she is returned to the country of nationality. The fact that someone could take action to avoid persecution will not disentitle them from asylum if in fact they will not act in such a way as to avoid persecution, (e.g. stop public proselytising), however unreasonable that behaviour might be. That is a different matter from the fact that a person will be denied refugee status if they could be reasonably required to relocate within the country of nationality to a place where they can live without being persecuted.

12. Lord Rodger JSC delivered the leading judgment, which focused upon the fallacy underlying the proposition that if a homosexual person could avoid persecution by concealing their sexuality and living discreetly they would not have a well-founded fear of persecution. He set out the correct approach for tribunals to follow at [82], drawing a distinction between the situation in which a person chooses to live discreetly because of social pressures or fear of embarrassing his family, and the situation in which he does so for fear of the persecution which would follow if he were to live openly as a gay man. In the former case the person concerned has no well-founded fear of persecution because (for reasons which have nothing to do with persecution) he has chosen to live a life which does not expose him to persecution because of his sexual orientation. In the latter case, "to reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without persecution."

13. Lord Walker JSC expressly agreed with the approach set out by Lord Rodger at [82], stating that it involved "an essentially individual and fact-specific inquiry". So too did Lord Collins at [100].

14. The question whether a person's subjective fear of being persecuted for a Convention reason is objectively well-founded depends on the answer to one question, namely, whether on the evidence there is a real risk of the persecution occurring.

What constitutes human trafficking?

15. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons ("the Trafficking Protocol") is the world's primary instrument to combat human trafficking. It was adopted by the United Nations in November 2000 as part of the UN Convention against Transnational Organized Crime. It is the first legally binding instrument with an internationally recognized definition of human trafficking. Article 3(a) provides as follows:

> "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

The consent of a victim of trafficking to the intended exploitation is irrelevant where any of the means set out in Article 3(a) have been used (Article 3(b)).

16. The same definition of human trafficking is adopted in Article 4(a) of the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005 ("ECAT") which was ratified by the UK on 17 December 2008. It was subsequently adopted in the statutory guidance for the Modern Slavery Act 2015 and is the definition used by the NRM in its victim identification process.

17. Trafficking is a process which comprises a number of inter-related actions which may be carried out by different persons at different stages. The three essential components are an act or series of acts (e.g. recruitment, transportation, transfer, harbouring or receipt of persons), the means (e.g. deception, abduction, abuse of power, threats or coercive control or the giving or receiving of benefits to achieve consent) and the purpose (exploitation of the victim).

18. Trafficking may take place across borders, with recruitment taking place in one country and receipt of the victims and their exploitation taking place in another or others. The intention to exploit the victim underpins the entire process.

THE CASE OF EAV

19. EAV is from Tibanban, a rural coastal province in the Philippines. According to an expert report from Professor Sidel dated 10 November 2022, on which she relied and which is referred to in para [8] of the FtT decision, roughly 1/3 of the population in her hometown were estimated to be living below the poverty line. She is married with a child, but estranged from her husband. She is now aged 37.

20. In 2014 EAV signed a contract with a recruitment agency based in Manila which focused on jobs in the Middle East. She was told that she would be a domestic worker, that she would work eight hours a day, six days a week, and that she would have days off. However, once she started the job with a family in Saudi Arabia she found that she was expected to act as both housekeeper and childminder, and she had no time off. She worked long hours each day, from 8am to midnight and sometimes to 2am. Her meals were leftovers. Her passport and phone were taken from her, and she was not permitted to leave the house unless she was accompanied. She suffered both physical and verbal abuse at the hands of her employers.

21. In August 2016 she came to the UK with the family for whom she worked. She returned to the Philippines for a brief holiday, but went back to the job with the family

in Saudi Arabia because she felt there was no alternative. In July 2017 she again came to the UK with her employers. On that occasion, shortly before the family was due to return to Saudi Arabia, she escaped with the assistance of a domestic workers' charity. She was referred to the NRM and on 21 November 2017 a positive decision was made that there were reasonable grounds to believe that EAV had been trafficked for domestic servitude. The conclusive grounds decision was made on 14 July 2022. The SSHD accepts that her account of being trafficked is credible, and consistent with objective information.

22. EAV did not make a claim for asylum or humanitarian protection until 14 December 2020. Her explanation for the delay was that she received conflicting advice from friends and that it was not until she sought professional advice that she appreciated she could make such a claim. She said that on return to the Philippines she feared that she would be unable to get a job that paid her enough, and that she would have no choice but to work again in the Middle East to support her daughter. The child was living with EAV's estranged husband, but EAV said that he is not in a position to assist her financially and he has no fixed place of residence.

23. In the decision letter refusing EAV's asylum claim, dated 22 June 2022, the SSHD accepted that as a victim of trafficking she was a member of a particular social group in the Philippines. Reliance was placed on a report by the US Department of State in 2012 entitled "Trafficking in persons" which noted, among other matters, that human traffickers exploit victims from the Philippines abroad. Typically they work in partnership with local networks and facilitators and increasingly use social media sites and other digital platforms to recruit unsuspecting Filipinos through illegal recruitment practices such as deception, hidden fees, and production of fraudulent passports, overseas employment certificates and contracts. EAV's personal experience was in keeping with that pattern.

24. However, the SSHD refused EAV's claim on the basis that it was not accepted that she qualified for refugee status. The caseworker was not satisfied to a reasonable degree of likelihood that she would face a risk of persecution for a Convention reason or a real risk of serious harm on her return to the Philippines. Reliance was placed on the fact that her sister was a domestic worker in Manila and that she had parents and siblings in the Philippines with whom she remained in regular contact. Therefore it was said that she would be able to find a job in the Philippines, and if she were to decide to find work in Saudi Arabia instead, that would be the result of her own free choice.

25. EAV appealed to the FtT. In a decision promulgated on 23 May 2023 FtT Judge Farrelly found that it was not likely that she would be targeted by any particular individual in the Philippines. Therefore she said that she did not find the question of relocation or sufficiency of protection to be the issue. The risk to EAV arose out of "economic necessity". Her resettlement package would be finite. The best she could hope for would be low paid employment, and that would be insecure. Therefore, like many in the Philippines, she would consider working abroad. There was a real possibility that she would be at risk because of her economic vulnerability. The judge said that she was not suggesting that there is always a risk of persecution for individuals with economic difficulties, but that there was a risk to EAV because of her personal circumstances. She concluded that "there was a real risk of her being re-trafficked out of economic necessity if returned" [20].

26. The SSHD appealed to the UT on the basis that it was unclear from the FtT decision on what basis the FtT had concluded that EAV fell within the Refugee Convention. The panel (UT Judge Gleeson and Deputy UT Judge Sills) allowed the appeal. They held that the FtT had failed to identify a relevant risk of persecution in the country of origin; indeed, the Judge had held that EAV would not be targeted by any individual in the Philippines. The FtT Judge had referred to a risk to her arising out of "economic necessity," recognising that the claimant might only be able to obtain low paid employment in the Philippines and to choose to seek work abroad; that was not sufficient to bring her within the Refugee Convention. Her conclusion that EAV had a well-founded fear of persecution on return to the Philippines was inadequately reasoned and irrational. The UT set aside the decision for material error of law and decided to re-make the decision itself.

27. At paragraph 25 the UT said this:

> "While it is reasonably likely that the claimant would only be able to obtain low paid employment in the Philippines, we do not consider that this, or difficult economic circumstances, are capable of amounting to persecution within the Refugee Convention meaning, entitling the claimant to international protection. If an individual decides to leave their country of origin of their own free will and pursue economic opportunity abroad, they are not entitled to the protection of the Refugee Convention for any risks they would face outside their country of origin in doing so."

28. On 25 February 2025, following an oral hearing, this Court (Popplewell LJ and Sir Christopher Floyd) gave permission to appeal.

THE CASE OF GMP

29. GMP was born in Barangay and is the youngest of eight children. Her history is very similar to that of EAV, but she is older (she is now aged 53). She suffered domestic violence and coercive controlling behaviour at the hands of her former husband, with whom she has seven children. Most of the children are now adults (three are married with families of their own) but one of the adult children has a disability and still lives in the family home (though she has a job). Two are still minors.

30. After the couple separated and her husband stopped supporting the family in 2012, GMP found a job in Saudi Arabia through an agency. She was told that the job would involve cooking for a family and picking up and dropping off the eldest child from school. The agency paid for her flight and visa. When she arrived in Saudi Arabia she was taken to work for a different employer from the one named in her employment contract. Her passport was taken from her. She was required to work 7 days a week from 7am, often until midnight, to do all the housework, and to look after three children. She was regularly abused by her employer's wife, and one of the children was violent to her. She was only given leftovers to eat, and as time progressed, she was punished for making mistakes by being deprived of food. Her salary was paid, but it was often paid late. Like EAV she was not permitted to go out of the house unless escorted, and she was not even allowed to seek medical advice independently. She was taken to the UK by her employers on 4 occasions between 2014 and 2017 and told by them to lie about her working conditions.

31. In 2017, during a visit with the family to London she managed to escape; her employer's wife then falsely accused her of stealing money. She was referred to the NRM who made a positive reasonable grounds decision that she had been trafficked for domestic servitude on 21 November 2017. On 14 February 2022 (following reconsideration of a negative decision) a positive conclusive grounds decision was issued. In the meantime, on 18 November 2020 GMP submitted her asylum claim. The predominant concern that she articulated at that stage was a fear of violence at the hands of her ex-husband, which was not a matter falling within the Refugee Convention.

32. In the decision letter rejecting that claim, which is dated 16 March 2023, it was held that "potential victims of trafficking" are *not* considered to form a particular social group within the meaning of the Refugee Convention. The explanation for the apparent difference from the stance taken by the SSHD in EAV's case is that in November 2022, after the SSHD's decision in EAV's case, a new country policy and information note (CPIN) was published on the Philippines. The SSHD's position regarding risk of trafficking is set out in that document. Paragraph 2.3.2 explains why *potential* victims of trafficking are not considered to form a particular social group:

> "This is because they do not share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it and they do not have a distinct identity in the Philippines because the group is not perceived as being different by the surrounding society."

33. However the CPIN does recognize women and children who have been trafficked for the purposes of sexual exploitation as being "likely" to form a particular social group because they do share a common background that cannot be changed (their past experience of being trafficked) and are likely to have a distinct identity within Filipino society because of prevailing societal attitudes towards women and child victims of sexual trafficking (paras 2.3.3 and 2.3.4 and paragraph 5). The CPIN is silent on social attitudes towards individuals who have been trafficked for other purposes.

34. The decision in GMP's case does not directly address the contention that she was at risk of being re-trafficked to the Middle East, but that submission may not have been articulated in the same way as it is now framed, and in any event it appears to have been a subsidiary argument since the focus was plainly on the risk of domestic violence. GMP appealed to the FtT. In the meantime, she was granted Discretionary Leave to Remain valid from 12 May 2023 until 10 May 2024.

35. In a carefully reasoned decision promulgated on 20 February 2024, FtT Judge Jarvis found the appellant to be a credible witness but decided on the evidence there had been no direct contact between her and her former husband for 10 years and that she had not established a real risk that he would seek to find her upon her return to Manila.

36. On the risk of re-trafficking, the Judge recorded the submission by counsel then representing GMP that the risk arose not within the Philippines itself but from GMP being compelled to seek work abroad, and specifically in the Middle East where she

would face a real risk of further modern slavery. He noted that the SSHD did not challenge the thrust of GMP's case that there was a reasonable likelihood of modern slavery if she was compelled to seek work overseas. However he found on the evidence that it was not reasonably likely that she would seek work overseas, thereby endangering her own safety. He gave clear and cogent reasons for those findings which are set out at [58]. These included the family's ability to manage during periods when GMP was unable to send them money from the UK; the fact that most of the children were now adults living independent lives; GMP's own recovery from depression and trauma; and her demonstrated resilience during periods of hardship in the UK.

37. On 21 June 2024 the UT dismissed GMP's appeal on the basis that the decision of the FtT contained no material error of law. They held that the fact- findings made by the Judge were open to him on the evidence. Permission to appeal was granted by this court on the same occasion as permission was granted in the case of EAV, although the court expressed some doubt as to whether this was simply an impermissible attempt to appeal the findings of fact made at paragraph [58] of the FtT decision.

THE APPELLANTS' SUBMISSIONS

38. On behalf of the Appellants Ms Sonali Naik KC contended that the UT in EAV's case was wrong to find that there was a material error of law in the FtT's decision. In the alternative, the UT fell into error in the re-making decision by failing to appreciate how the Refugee Convention interacts with the Trafficking Protocol (and ECAT). The UT's approach demonstrated a fundamental misunderstanding of the definition of trafficking, the legal irrelevance of consent to the conduct comprising the trafficking, and the relationship between trafficking and protection from persecutory harm under the Refugee Convention.

39. Ms Naik pointed out that the case had proceeded throughout on the basis of the Respondent's acceptance that EAV, as a female former victim of trafficking, was a member of a "particular social group" in the Philippines. She said that it would be unfair for the Respondent to resile from that position now.

40. Ms Naik's primary submission was that there was no error of law in the FtT's approach. In finding that the FtT "failed to identify a relevant risk of persecution in the country of origin" (paragraph [18]) the UT misdirected itself on the definition of trafficking, which involves interlinked acts beginning with the deception practised upon the vulnerable women by the agencies which recruit them. The trafficking started in the Philippines and the forced servitude which amounted to persecution was all part and parcel of a continuous course of conduct.

41. The UT accepted that if EAV were to return to the Philippines, then due to poor economic circumstances, she might decide to work abroad again, because such work is better paid than the work she would find in the Philippines, and that if she chose to work as a domestic worker in the Middle East she would face a real risk of suffering the same treatment as before (paragraph [24]).

42. Ms Naik relied on the fact that the CPIN acknowledges that "traffickers prey on the economically disadvantaged, using debt-based coercion on the promise of work to lure their victims". The unchallenged expert evidence was to the effect that the state

of return could not protect EAV from corrupt recruitment practices. She contended that by accepting that the past chain of events amounted to human trafficking, the SSHD must also have accepted that any consent given by each of the appellants to their employment overseas was irrelevant, and vitiated by the deception practised upon them by the agencies. Any similar future consent was therefore to be regarded as irrelevant when evaluating any risk of serious harm through similar exploitation arising in the future.

43. Ms Naik further relied on the fact that past persecution is legally relevant to the assessment of future risk of persecution. She quoted paragraph 339K of the Immigration Rules:

> "Past persecution is a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm if returned to their country of origin unless there are good reasons to consider that such persecution or serious harm will not be repeated."

44. Ms Naik accepted that whether a past trafficking victim is or is not at real and immediate risk of being re-trafficked requires a "careful assessment" *R(TDT) v Secretary of State for the Home Department* [2018] 1 WLR 4922 at [41]. She submitted that it does not matter if the risk arises as a matter of the victim's choice to behave in a particular manner: *Ahmed v Secretary of State for the Home Department* [2000] INLR 1. She also relied on *HJ Iran*, particularly the passage in Lord Rodger's judgment at [63] to [68] which exposed the fallacy in the argument that if someone would modify their conduct so as to avoid persecution in the future, on return to their home state, there is no threat of harm.

45. Ms Naik submitted that in EAV's case, the FtT accepted her evidence that she would have no way to avoid extreme poverty other than to seek employment overseas again, which put her at real risk of further exploitation. The UT proceeded on the basis of the FtT's fact-findings. Therefore, Ms Naik argued, the case for protection was made out. EAV would in fact seek employment abroad because in economic terms she had no choice, and if she were to do so she would face a real risk of suffering persecutory treatment.

46. Ms Naik realistically acknowledged that she faced a harder task in the case of GMP, in the face of the fact-findings that GMP would not choose to seek employment abroad. She submitted that these findings were premised on a mistake of law as to the irrelevance of consent in the context of human trafficking, and on the finding that GMP would not "seek to endanger herself again". That approach, she contended, ignored the unscrupulous means of recruitment which might be deployed by local agencies to lure GMP into working in the Middle East again, which were matters entirely outside GMP's control. The FtT judge's reasoning was premised on an unfounded assumption that because GMP had suffered persecution previously, she would act in such a way as to avoid it happening to her again.

THE SECRETARY OF STATE'S RESPONSE

47. Lord Murray submitted that both decisions of the UT were right for the reasons which they gave. The finding by the FtT judge that GMP would not seek to work abroad on her return to the Philippines was unassailable, and fatal to her claim. In answer to the

criticisms of that finding, Lord Murray contended that too much emphasis was being placed on the words " it is not reasonably likely that the Appellant would seek to endanger herself" when the nub of the fact-finding was that she would not seek to work abroad. Whatever her motivations, that finding was an insuperable obstacle to her asylum claim. It was not based on an assumption, but on the evidence, including in particular what GMP herself had said.

48. Lord Murray submitted that even if by using the expression "seek to endanger herself" the judge was addressing GMP's motives, rather than simply explaining that she would be taking an obvious risk, he was entitled to make the findings that he did. As well as considering what the experts said and GMP's own evidence, the judge was entitled to consider whether, in the light of her recent experiences, GMP would exercise more caution about where she sought employment, especially since her personal circumstances had changed and her family was no longer as financially dependent upon her as they had been.

49. Turning to the case of EAV, Lord Murray submitted that the critical obstacle in EAV's case was the absence of a causative link between the fear of persecution and her membership of a particular social group. The risk to EAV arose from her impoverished economic circumstances, which existed independently of her past history of being trafficked.

50. Lord Murray further submitted that EAV's choice to seek employment abroad could not be equated with a decision to proselytise or a decision to live openly as a gay man. The decision in *HJ (Iran)* concerned a protected characteristic; the individual concerned was not required to hide that characteristic in order to avoid being persecuted on account of it. However no sound analogy could be drawn between the situation in *HJ (Iran)* and the present cases, because here, the persecution was said to be on account of membership of a particular social group (former victims of trafficking) and not some innate characteristic such as sexuality. There was no question of GMP (or EAV) being required to conceal the fact that they had been trafficked before, in order to avoid being trafficked again.

51. In response to the submissions by Ms Naik that the unchallenged expert evidence indicated that the Philippines was unable to provide sufficient protection against the risk of re-trafficking, Lord Murray pointed to the fact that in the SSHD's decision in EAV's case there was an express finding of sufficiency of protection, based upon the CPIN, which the decision maker quoted from verbatim (paragraphs 32 to 38). The expert evidence was dated – it went back to 2014. The UT did not need to consider that issue given that it found that EAV failed to meet the criteria for being a refugee.

DISCUSSION AND CONCLUSION

52. I am prepared to assume for the purposes of both appeals that both women belong to a particular social group, notwithstanding the absence of any clear evidence that former victims of trafficking, or females who are former victims of trafficking (other than for the purposes of sexual exploitation) are perceived in Philippines society as having a distinct identity.

53. Turning first to EAV's case, the UT was right to find a material error of law in the FtT judge's decision and that it was inadequately reasoned. The FtT judge found that

it was unlikely that EAV would be "targeted" (presumably by those involved in the original trafficking), as sometimes occurs when victims return to their home villages and are tracked down and threatened or coerced into returning to their exploiters.

54. She then found that the risk to EAV arose from economic necessity and that EAV would be at risk because she was economically vulnerable. But that, in and of itself, was plainly insufficient to establish that the persecutory treatment of which EAV has a well-founded fear is causally linked with her membership of a particular social group. As the CPIN makes clear, economically vulnerable persons who are at risk of being trafficked in future do not belong to a particular recognised social group. The FtT judge went on to say that she was not suggesting that there was always a risk of persecution for individuals with economic difficulties (no doubt recognising the problems that such a finding would engender) but rather that the risk arose because of EAV's particular personal circumstances. However she failed to identify what it was about EAV's personal circumstances which made her different from any other impoverished person in the Philippines who was driven by economic need to seek employment abroad.

55. The UT was right to find that the fact that EAV might only be able to obtain low paid employment in the Philippines and so choose to work abroad, thereby running the risk of further exploitation, would not suffice to bring her within the Refugee Convention, and that the FtT judge's decision was legally flawed and inadequately reasoned.

56. It is fair to say that the UT's own re-made decision is not as clearly expressed as it might have been. The FtT's fact-findings, which were preserved, were that the risk to EAV arose from economic necessity and economic vulnerability. The UT was right to identify that poverty which makes someone vulnerable to exploitation by human traffickers in their home country does not entitle them to refugee status. However in Paragraph 25, the UT expresses the view that the fact that EAV would only be able to obtain low paid employment in the Philippines or the existence of difficult economic circumstances are not capable of amounting to persecution within the Refugee Convention, entitling her to international protection. Of course the panel was right to conclude that hardship arising from dire poverty cannot be equated with persecution, but that was not the argument that the UT was required to address. The issue was whether EAV was exposed to a real risk of further exploitation on account of her being a past victim of trafficking. The UT seems to have reasoned that because of the finding that EAV would not be targeted by the traffickers, and the acceptance by the FtT judge that any decision to work abroad would be made of her own free will, albeit in consequence of economic pressures, the necessary causal connection was not made out.

57. Insofar as the UT's reasoning might be interpreted as suggesting that because the putative future adverse treatment would occur outside the Philippines, in the Middle East, there was no relevant risk within the country of return, that analysis would also be wrong; Ms Naik's submission that trafficking (and thus exploitation) begins with the nefarious behaviour of the recruitment agency in the Philippines is clearly correct.

58. Ms Naik is also correct that a risk which gives rise to Convention protection may come about as a consequence of the individual's choice or decision to behave in a particular way, though as Lord Murray rightly pointed out, the case law on that topic (e.g. *Ahmed, HJ (Iran)*) is concerned with behaviour giving expression to an innate

characteristic or belief which, when expressed openly, attracts persecution on account of it. I agree with Lord Murray that the analogy sought to be drawn with *HJ (Iran)* is flawed, for the reasons he gave.

59. The important point is that what drives the individual's behaviour in the present case is economic pressure, rather than her membership of a particular social group. EAV's status as a former victim of trafficking is not a reason why she is at risk of being exploited were she to seek to work abroad again. She was economically vulnerable before she was trafficked and remained economically vulnerable afterwards. There was no evidence, and more pertinently no finding by the FtT, that she was any more vulnerable to exploitation than any other impoverished female in the Philippines because she had been exploited in the past.

60. The answer to the key question was therefore plainly no, because the necessary causal link between membership of the particular social group and the risk of persecutory treatment is not established. That risk was present and remained the same irrespective of whether EAV had been trafficked before. There was no finding that the fact EAV had been trafficked before was a reason for the persecutory treatment which she feared might occur on her return. That is fatal to her case.

61. As for GMP, the FtT judge was satisfied that there was, in fact, no real risk of her being re-trafficked, and he gave cogent reasons for his conclusions. I am not persuaded by Ms Naik that those findings are tainted by any error of law or that they can be disturbed on appeal. He was entitled to take the view that GMP would not be willing to take the risk of repetition of her past experiences at the hands of her former employers in the Middle East.

62. For those reasons, I would dismiss both these appeals.

Lord Justice Jeremy Baker:

63. I agree.

Lord Justice Baker

64. I also agree.