



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

AZ (Trafficked women) Thailand CG [2010] UKUT 118 (IAC)

THE IMMIGRATION ACTS

Heard at Taylor House

On 26 January 2010

Before

Senior Immigration Judge Kekić

Immigration Judge Freestone

Between

AZ

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Ms M Brewer, Counsel

For the Respondent: Ms H Akbar, Home Office Presenting Officer

1. Whilst former victims of trafficking in Thailand constitute members of a particular social group, not all will be at risk of serious harm on return; the risk will depend upon a number of factors and must be assessed on a case by case basis.
2. 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.
3. Although anti-trafficking legislation has been implemented, the involvement of corrupt officials with traffickers and/or criminals has weakened the steps taken by the government to combat trafficking.

DETERMINATION AND REASONS

1.

This is the reconsideration of the determination of the Tribunal (Immigration Judge Drummond-Farrall) dismissing the appeal against the decision of the Secretary of State to remove the appellant from the UK as an illegal entrant under section 10 of the Immigration and Asylum Act 1999. The appellant is a Thai citizen born on 16 August 1983 in Nong Khai Province, in the north east of Thailand.

2.

The core of the appellant's claim is accepted by the respondent. It is that she was trafficked to the UK in early 2006 and forced into prostitution until her escape from her captors in September 2006. When attempting to leave the UK on a false passport, the appellant was stopped by the immigration authorities at Heathrow Airport and arrested. She was subsequently convicted for using a false document and sentenced to four and a half months in prison. What the respondent disputes, and what we must assess, is whether a victim of trafficking is a member of a particular social group, whether the appellant's trafficker acted alone or as part of an organised gang and whether the appellant would be at risk on return from those who trafficked her.

Details of the appellant's claim

3.

The appellant has painted a picture of a deprived and abusive childhood which has not been challenged by the respondent. She grew up with her paternal grandparents (now deceased), her mother having abandoned her when she was just one year old. There was little contact with her father and no reference to any maternal relatives. The appellant had six years of schooling following which she worked until the age of 15 when she left home. She became pregnant but then discovered that her boyfriend was married. He disputed paternity and the appellant attempted suicide. She spent a week in hospital as a result and then returned to work. She sent her child, then aged 9-10 months to be looked after by her paternal aunt and cousin as she was unable to work and care for the child at the same time. She continued to financially support the child.

4.

In 2004 the appellant moved to Pattaya. It was there she met the man who was responsible for her trafficking - M. She described him as British but "Arab looking" . The appellant was working in a bar/restaurant at the time. A relationship commenced and when M suggested a holiday to the UK, the appellant agreed. She used her own passport and M arranged a visa. It would appear that she went to the British Embassy with M and signed some forms but was not interviewed and did not apparently have to adduce any documentary evidence. The appellant left her child with her aunt. When passing through Bangkok airport she heard one of the immigration officials indicate to another that M was one of "theirs". Although she did not understand the meaning of that at the time, she later believed it to mean that M had connections with Thai Immigration. The appellant's passport was taken from her by M during the journey. Having arrived in London, they stayed at M's friend's house and did some sightseeing. A week later M took the appellant to another house and it was then that the appellant's troubles began.

5.

The appellant was told she had to repay M for the investment he had made in her by bringing her to the UK and she was kept in three brothels on a rotating basis where she was forced into prostitution for the next eight months. She was afraid to refuse as M threatened to harm her and/or her child if she resisted. She was also transported to hotels for sex. She endured anal intercourse, was made to perform oral sex and to act out perverse sexual fantasies. She was injected with drugs. She was

frequently whipped. She was made to behave like a dog. Condoms were not always used and she could not object. She continued to work during menstruation. If she refused to carry out any of the acts men desired, she was sent to another house where she had to work twenty hours a day and service 20-30 men. On one occasion when visiting a hotel she tried to escape but was caught and beaten with a gun. She was punished by being locked up in a small dark room without food. M then slapped her and threatened to kill her. She met a few other women also working in the houses with her. She said that the houses were guarded and that there was always an escort when they were taken to other houses or to hotels. She was given no money for her work.

6.

In September 2006 the appellant was able to escape with the help of a regular client. The appellant had a passport that M had given her for identification purposes when she visited hotels. She then attempted to return to Thailand using that document. There followed the prosecution already referred to. On 19 February 2007 removal directions were set but cancelled when the appellant informed a prison officer that she was afraid to return. The appellant was transferred to Yarl's Wood Detention Centre. On 21 February 2007 the appellant disclosed her true identity to the authorities. On 3 March 2007 she was referred to the UK Human Trafficking Centre (UKHTC). On 5 March 2007 she was placed in a safe house run by the Medaille Trust, a charity founded by Catholic nuns, brothers and priests with the aim of helping women, young men and children who have been freed from sex-trafficking. On 7 March 2007 removal directions were set again but cancelled when the appellant refused to comply.

7.

The appellant claimed asylum on 15 July 2007. She claimed that if returned to Thailand she would be hunted down by M's gang. She believed that M had links with Thai immigration. She claimed that the Thai police were corrupt. On 26 July 2007 she was referred to the Poppy Project. Their initial assessment took place on 15 August 2007. The substantive asylum interview took place on 26 September 2007. On 10 October 2007 the Poppy Project accepted the appellant's account of being trafficked and forced into prostitution.

Respondent's refusal

8.

The application was refused on 17 October 2007 and a decision to remove the appellant from the UK was made on the same date.

9.

The Secretary of State decided that "due to your level of consistency and detail bearing in mind the trauma you have experienced, your age and your level of education, that your account will be largely accepted. In particular, it is accepted that you were trafficked to the UK and forced into prostitution during which time you were beaten and mistreated by your traffickers and you escaped and attempted to return to Thailand".

10.

The Secretary of State did not accept, however, that "women who had been sexually trafficked in the past in Thailand" constituted a social group. He found that there was no social recognition of this group as distinct from the rest of society. He considered that if the appellant faced persecution it was not because of her membership of that group but because she was specifically wanted by her traffickers.

11.

The Secretary of State did not accept that M was part of a well organised criminal gang with connections to the Thai immigration service. He considered that if M had been part of a gang, he would not have become the appellant's boyfriend and would not have brought her to the UK and spent a week with her before forcing her into prostitution. He also considered that if the appellant believed that M was connected to Thai immigration, she would not have tried to return to Thailand in October 2006 and would have sought asylum earlier.

12.

The Secretary of State considered that the appellant could prevent being re-trafficked by ensuring "that you do not return to a situation that would result in you being economically driven back into prostitution" (paragraph 33). He was of the view that even if it was accepted that the appellant faced persecution, there was a sufficiency of protection available. He noted that the Thai government announced the formation of a national committee in 2005 to assist victims of trafficking and to crack down on trafficking gangs. He considered the appellant had the support of her aunt and cousins. He also considered that the option of internal relocation would be open to the appellant.

13.

The Secretary of State noted that the appellant had used a false visa to enter the UK and had attempted to leave on a false passport. He considered this adversely affected her credibility.

14.

He did not consider that the appellant could benefit from the Human Rights Convention and found that she was not entitled to Discretionary Leave. He considered that the appellant's medical problems could be treated in Thailand.

Previous appeal and error of law

15.

The appellant gave notice of appeal under s. 82(1) of the Nationality, Immigration and Asylum Act 2002 on 29 October 2007.

16.

The appeal came before an Immigration Judge at Taylor House on 25 January 2008. She heard oral evidence from the appellant and from Lucy Kralj, a senior clinician at the Helen Bamber Foundation and in a determination promulgated on 25 February 2008 allowed the appeal on Article 3 grounds but dismissed it under the Refugee Convention. The respondent sought reconsideration and this was ordered by Senior Immigration Judge Spencer on 10 March 2008.

17.

On 23 May 2008 Senior Immigration Judge Freeman heard the first stage of the reconsideration at Field House. He found that the Immigration Judge had made a material error of law and adjourned for a second stage reconsideration. He gave the following reasons for his decision:

1. The judge found for the appellant on her individual history, but against her on the general (as I accept paragraph 19 must be read) sufficiency of protection for victims of trafficking in Thailand; then she moved directly (after a quite unnecessary reference to a decision of the Australian Federal Magistrates' Court at paragraph 20) to the following conclusion:

21. In the particular circumstances of this case my finding is that there are substantial grounds to believe that the appellant is at real risk of being re-trafficked. She has been trafficked before. She is

undoubtedly known to the gang who trafficked her. She is a very vulnerable human being from the medical reports and from my own observation of her in court and added to this she has a family history which is far from being supportive. She is undoubtedly in debt to her trafficker who would want as put at the hearing "his money's worth" and the risk of her being re-trafficked is very high. I therefore find that there are substantial grounds to believe that she is at risk of serious harm or inhuman or degrading treatment should she return to Thailand and I allow this appeal.

2. This is challenged by Miss Leatherland for the Home Office as not dealing in particular either with the question of how traffickers would be able to trace the appellant on return to the teeming (65m) city of Bangkok, or with why she should be at risk from them in any other part of Thailand where she could reasonably be expected to go.

3. Miss Chandran for the appellant asked me to uphold it as amounting to proper reasons for the judge's decision to allow the human rights appeal by reference to her acceptance of the appellant's account of immigration officers at Bangkok airport apparently being in collusion with traffickers, and by incorporating the reports of Klara Scrivankova (sic) and Lucy Kralj (who also gave oral evidence, which should have been referred to under that name at paragraph 6).

4. Miss Scrivankova's (sic) evidence, however, as related by the judge at paragraph 16, does no more than state the general modus operandi of traffickers in Thailand, and opine that the appellant's account was consistent with it, none of which is relevant to the issues in dispute. Miss Kralj described her remit as 'clinical': in other words, she was there to give evidence about the risk of the appellant's committing suicide. While she did refer to two previous attempts, the judge did no more on this point than refer to her (see above) as "a very vulnerable human being". While the possibility exists of a case succeeding under article 3 of the Human Rights Convention on the basis of suicide risk, such cases are problematic, and cannot conceivably be dealt with on the basis of such an unspoken inference.

5. That leaves the problem with the immigration officers, based on the appellant's own evidence. If the judge had dealt with this in her conclusions, then she might or might not have been able to spell out of it a case for this appellant's being at risk at the point of return; but she did not even begin to do so. Unfortunately for this appellant in her mental condition, there will have to be a completely fresh hearing on the human rights appeal. The Home Office concessions on the primary facts of the case will no doubt stand, though subject of course consideration to what ought to be concluded from them, in particular on the points raised by the presenting officer before the judge at paragraph 7.

6. The judge had dismissed the asylum appeal, on the basis that the appellant's social group did not exist independently of her persecution, and of her findings about the general sufficiency of protection. The appellant challenged this by r. 30 notice, mainly on the basis that the judge had not dealt with SB (PSG -Protection Regulations -Reg 6) Moldova CG [2008] UKAIT 00002, to which she had been referred, according to Miss Chandran with considerably more emphasis than on the Australian case already mentioned.

7. The r. 30 notice suggests that the judge should have allowed the asylum appeal too on the basis of SB; but Miss Chandran (who also appeared in that case) wished to argue that the (very exhaustive decision) in it had gone too far in dealing with the state of the law on the point, which had been substantially agreed between her and Treasury counsel. It is open to her to do so, since neither was SB a starred case, or was this point, as opposed to the Tribunal's conclusions on the background evidence, a country guidance one; but I do not hold out any particular encouragement.

A long history of adjournments followed before the appeal came to us. It is helpful to set out the detail as this is relevant to the issue of an adjournment sought by the respondent at the hearing before us (see paragraphs 19-20 below). The hearing of 29 July 2008 was adjourned because Ms Chandran was not available. On 19 August 2008 the hearing was adjourned because Ms Skrivankova was unavailable. The next hearing was 30 September 2008 and the appeal had to be adjourned again due to Ms Skrivankova's unavailability. The matter was re-listed for 18 November 2008 but had to be adjourned because a Senior Immigration Judge was not available. The hearing was then set down for a hearing on 16 December 2008 but had to be adjourned to 19 December due to Counsel's unavailability. The hearing on 19 December was then adjourned (before the hearing) because a Senior Immigration Judge was not available. Attempts were made to list the appeal for a hearing in April but the representatives notified the Tribunal that Ms Chandran was on maternity leave until June. The representatives were advised to instruct alternative Counsel and the appeal was then listed for 12 May 2009. At the hearing the appellant's representative requested an all female court so the appeal had to be adjourned again. It was listed for 28 July 2009 but Ms Kralj was not available. Various attempts were then made for re-listing until the matter finally came before us.

Addition to claim

19.

Since the last hearing the appellant has prepared a fresh witness statement in which additional evidence has been provided. The appellant states that she developed a relationship with a British citizen, whom we shall call AB. They met in April 2008 at an emergency accommodation centre for asylum seekers to which the appellant was referred and where AB was working as night receptionist. After the appellant left the centre, she and AB maintained contact. AB then left his employment at the centre and they began a relationship. They spent a lot of time together but did not live together because AB is Muslim and does not approve of cohabitation outside marriage. Notwithstanding that, however, they have a sexual relationship and the appellant terminated a pregnancy in March 2009 because they agreed they could not afford a child. They plan to marry in the future.

Reconsideration hearing

Adjournment application

20.

The hearing came before us in an all female court held in camera on 26 January 2010. At the start of the proceedings Ms Akbar sought an adjournment as although she had some of the papers for the appeal, she was without the Home Office file. She indicated that she had tried the previous day to contact the representatives but without success. When asked whether any attempt had been made to contact the Tribunal, she replied in the negative.

21.

We considered the application which we decided to refuse. In so doing we gave consideration to paragraph 21 of the Asylum and Immigration (Procedure) Rules 2005. The relevant provisions say:

21. - (1) Where a party applies for an adjournment of a hearing of an appeal, he must -

- (a) if practicable, notify all other parties of the application;
- (b) show good reason why an adjournment is necessary; and

(c) produce evidence of any fact or matter relied upon in support of the application.

(2) The Tribunal must not adjourn a hearing of an appeal on the application of a party, unless satisfied that the appeal cannot otherwise be justly determined.

We were mindful of the numerous adjournments that had taken place and although none of these had been made on application by the respondent we gave weight to the strenuous efforts made to re-list the matter for a hearing date suitable to all parties, there being two expert witnesses with busy schedules to accommodate and the necessity of organising an all female court with a Senior Immigration Judge as a panel member. We were mindful of the impact of repeated adjournments on the appellant's fragile state of health, as indicated by the medical evidence before us and we considered that had to be our priority. We considered that no prior notice of the adjournment request had been given and we were of the view that the respondent could and should have taken steps to approach the Tribunal prior to the hearing or even earlier in the morning of the hearing to obtain a copy of the papers. We did not consider that the respondent's lack of papers amounted to good cause for an adjournment particularly as Ms Akbar had some of them and as the rest were available for her. We considered that the appeal could be justly determined without an adjournment once Ms Akbar had been given time to prepare. We bore in mind that there were limited credibility issues and that the case largely turned on the background evidence. We arranged for copies of the bundles to be made for Ms Akbar and allowed her time to prepare.

22.

Before we rose, Ms Brewer asked for clarification from Ms Akbar as to whether she had any information on what had transpired following the appellant's referral to the UK Human Trafficking Centre by the Poppy Project. We are aware that following the UK's ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, a national referral mechanism for identifying victims was required to be in place for 1 April 2009. Ms Akbar confirmed that as far as she was aware, nothing appeared to have been done. The hearing then resumed at midday.

23.

It has not been possible to promulgate this determination before the abolition of the AIT on 15 February 2010. Pursuant to Schedule 4.4 of the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.1.2010/21), the reconsideration of this appeal therefore continues as an appeal before the Upper Tribunal of the IAC.

Appellant's oral evidence

24.

The appellant gave evidence first. She was accompanied by Diane Chipperfield, her therapist. She spoke in Thai through the court interpreter. Both confirmed that they understood one another. The appellant confirmed her address to be as on the court file. She confirmed that the signatures on the two statements dated 7 January 2008 and 18 January 2010 were hers, that she was aware of the contents and that they were true and accurate. She confirmed she was happy to rely on them as part of her evidence.

25.

The appellant was asked about her knowledge of English in 2006 when she attempted to return to Thailand. She said she had very little knowledge of the language and could just speak a few basic words. She said had been very afraid to speak to the police about her problems as she believed they

would side with M and his gang. At this stage in the proceedings the appellant grew distressed but indicated that she wished to continue.

26.

She was asked about her relationship with AB. She confirmed they had discussed marriage although no date had yet been set. She said he had just finished his studies and had started a new job on 4 January. She was referred to the photographs in the supplementary bundle. She confirmed that the originals had been sent to her solicitors. She identified herself in the photographs with AB and his nephew in one of them and with AB and a friend in another. She stated that AB was very special to her and that if she were to be returned to Thailand without him she would lose the hope to live. That completed examination in chief.

27.

In response to Ms Akbar's questions, the appellant stated that the relationship had begun in May 2008. She stated that since AB obtained his new job he lived and worked in Slough but had previously lived in the 'zone two' area of London. She now saw him every Wednesday. She obtained a free ticket to travel and report to the Home Office on Wednesdays and so she then used the ticket to visit him. She would stay overnight and travel home the next day. He had one room in his landlord's house. The appellant stated he had never been to Thailand and they had not discussed what would happen if she had to return there. She expected, however, to maintain contact with him if returned. She confirmed that she had one child who was eight last September. They were sometimes in touch. The appellant's aunt was looking after her. Her aunt financially supported the child as the appellant had no job and could not afford to, but sometimes AB gave her money to send to Thailand. At this stage the appellant became extremely distressed and was unable to compose herself. Ms Akbar indicated that she had intended to ask some questions about the appellant's attempted return to Thailand but she would refrain from doing so given the appellant's obvious and extreme distress and would rely on the information contained in the witness statements. The appellant was assisted from the hearing room by Ms Chipperfield and Ms Brewer; she appeared physically unable to make her own way out.

AB's evidence

28.

We then heard evidence from AB. He was not aware of the details of the appellant's claim as she has not yet felt able to fully discuss it with him. He confirmed his address and indicated that he was aware of the contents of his witness statement upon which he relied. He did not speak Thai and had never been to Thailand. He said it would be difficult for him to live there because he had work in the UK and a family here. He started his present job on 4 January 2010. He was an account assistant. He did not live with the appellant but intended to save for a deposit for the next three months. They had talked about getting married at some point. He said that her removal would have a detrimental effect on him as he loved her and they had been seeing each other for almost 2 years. She came to visit him every Wednesday after signing on at the Home Office but was only able to stay one night a week because his landlord was not keen on more frequent overnight stays. He stated that he came to London at weekends and they would spend the day together. He said no specific date for the marriage had been set but that once they started living together that would be the next step. If the appellant had to return to Thailand he would communicate with her and would travel there to visit her. He had not been supporting her financially for the last seven months as he had been studying. He would be willing to offer financial help if she returned to Thailand. He said she had an aunt and a daughter there. He had spoken to the daughter, just to say hello. That completed cross examination. There was no re-examination.

29.

In response to questions from the bench the witness stated that he had lived in the UK for almost 10 years. He had one relative in the UK - an uncle. When asked about plans for the appellant's daughter's future, he stated that the appellant had indicated she wanted the child to remain in Thailand because she would get a better upbringing with the appellant's aunt. She had no plans to bring her here until she was of the age when she would go to college.

30.

Ms Akbar had no questions arising. Ms Brewer asked the witness about the child in one of the photographs. The witness stated this was his sister's son who lived in Holland but had come to the UK for a holiday. That completed his evidence.

Lucy Kralj's evidence

31.

The next witness was Lucy Kralj, leading clinician at the Helen Bamber Foundation. She confirmed that the updated report in the supplementary bundle had been prepared on 16 January 2010. She stood by the contents of that report and her earlier report. She stated that the Foundation worked with survivors of human rights abuses. It assisted them to obtain services, with social rehabilitation programmes and with clinical therapy. She confirmed they received a number of referrals for therapeutic support from the Poppy Project. She was asked about the amount of contact she had with trafficked victims in her role at the Foundation. She replied that she had a great deal of contact. She had been co-ordinator of the Women's Programme and had overall clinical responsibility for all trafficked women. Additionally, she worked individually with trafficked women over the last five years; many of these women remained in long-term therapy.

32.

Ms Kralj stated that she had seen some improvement in the appellant's mental state but had no doubt she would 'decompensate' rapidly if returned to Thailand; by this she meant the appellant would lose her coping strategies should she be re-traumatised. She confirmed that the appellant's current support network consisted of herself, Diane Chipperfield and AB. She stated that the appellant had a low threshold with respect to re-traumatising triggers. Anything from the past could act as a trigger. She gave the example of how the appellant avoided contact with any individual from Thailand and that despite the presence of other Thais at the Medaille Trust, where the appellant used to live, she shied away from them. She avoided talking about her past trauma. The name 'M' still carried significant weight and continued to "send a shudder through her".

33.

Ms Kralj was asked for her opinion of the impact on the appellant of removal. She replied that the appellant had made two serious suicide attempts and she had no doubt the appellant would expedite a suicide attempt if she were to be removed. She explained that the appellant was not suicidal at the current time and managed to live adequately with support, but emphasised that her history indicated that she was not afraid of death and indeed was more afraid of trafficking. She needed to have suicide as an option in the face of danger.

34.

Ms Kralj stated that the appellant found her past to be deeply traumatic and did not like to talk about it. She also lived with a sense of stigma and defilement and a profound sense of shame. The combination of all those factors meant that it was unlikely she would talk about her experiences to the

police in Thailand. It was possible to facilitate her ability to discuss the past but only in a relationship where her feelings could be managed.

35.

Ms Kralj was asked about the appellant's attempt to return to Thailand in 2006. She explained that the appellant was returning there to die. She believed her choices were to die here or to die in Thailand and she wanted her daughter to be close so as to carry out death rites. It was also important to remember that in 2006 the UK was a country that represented great danger to her and the appellant had not been thinking in a straightforward or rational manner at that time. That completed examination in chief.

36.

In cross-examination the witness stated that she believed the appellant's suicide attempt in the UK had taken place in 2007 not long before she met her. Ms Kralj stated that the appellant saw her and Ms Chipperfield on a fortnightly basis which meant that she had contact with one of them every week. The appellant was not on medication. Her condition had improved somewhat. This was partly because of her relationship but the relationship itself had been able to develop because she had made progress in therapy. The appellant and the Foundation were now considering ways in which she might be able to offer hope to others in similar situations in the future. It was possible that a booklet would be prepared but at present this was just an idea.

37.

Ms Kralj stated that the appellant found it very painful to talk about her daughter and that the subject triggered great distress. The appellant felt very responsible for her and guilty that her daughter was living without a mother. She worried that her aunt did not care for the child properly.

38.

Ms Kralj was asked why it was better for the appellant to remain in the UK than to return to Thailand given the horrors she had experienced here. Ms Kralj replied this was because the problems had started in Thailand. She emphasised the importance of understanding the appellant's situation from a psychological perspective. The appellant had never been protected in her life. She had experienced no safe care during growing up and she was then preyed upon and exploited by M who abused her in horrific ways. There was a lack of protection in Thailand whereas the UK offered some hope. She stated that after the appellant had succeeded in her appeal before Immigration Judge Drummond Farrell, she expressed astonishment that someone had looked at her and seen something worthy of protection. She explained that the appellant could not simply seek alternative therapy if returned to Thailand. She emphasised that a therapeutic relationship could not just be manufactured; it had to be developed and if it were destroyed prematurely it could do great damage. That completed cross-examination. There was no re-examination.

39.

We asked Ms Kralj if she could explain the seemingly contradictory evidence between her description of the appellant's grief at being separated from her daughter and AB's claim that the appellant was happy for the child to remain in Thailand with her aunt. Ms Kralj replied that this was a psychological defence structure. The reality was that the appellant was separated from her daughter and had to accept the situation. In order to function, she had to defend herself from the grief she felt when she accessed feelings of separation. She had to tell herself that all was well with the child because if she allowed herself to experience the grief that sometimes arose during therapy, she was ground down

and could not physically move. There were no questions arising and that completed the witness' oral evidence.

Klara Skrivankova's evidence

40.

We then heard from Klara Skrivankova, Trafficking Programme Co-ordinator at Anti-Slavery International. She relied upon the contents of her two reports which she confirmed to be true and accurate. She stated that since summer 2008 she had been a member of the Expert Group on Trafficking in Human beings. This was an expert advisory organisation created through a decision of the European Commission. The group gave the Commission expert advice on policy and provided information on changes in trends of trafficking. She explained that the UKHTC was set up in October 2006 by the government but under the umbrella of South Yorkshire police with the purpose of being a depository of data and to provide victim care.

41.

Ms Skrivankova was asked to comment on the respondent's refusal to accept that M was part of an organised crime network. She replied that the activities described by the appellant in Thailand and in the UK suggested that he was part of an organised group. She said there were several indicators which led to this conclusion. First, he spoke Thai. By so doing he could target women that fitted the profile for trafficking. She explained that traffickers kept their victims behind a language barrier. If the women were unable to speak the language in their country of destination, they were even more isolated and were only able to communicate through the traffickers. Second, he had a flat in Pattaya. This was an area of Thailand known for sex tourism and notorious as a place of recruitment of women for sex trafficking purposes. Third, he had developed a relationship with the appellant. It was common practice amongst traffickers that men would pose as boyfriends, so-called 'lover boys', as by doing so they were able to create a relationship of power and vulnerability and to make women feel that they owed something to them. Fourth, M had been able to obtain a British visa for the appellant and later a passport for her which suggested he had connections with those who were involved in the business of fraudulent documents.

42.

With regard to the appellant's description of how she exited Thailand, the witness stated that her organisation and the UN office on drugs and crime had last year produced a working paper on corruption and how it aided trafficking. She explained that corruption was a key element. Very similar cases were found by her colleagues in Thailand where immigration officials at the airport were found either to be part of gangs or to have been bribed by them.

43.

She explained that there were also indicators arising from facts in the UK. For example, M had access to several houses with several girls in each one. Clearly, the houses had to be guarded; that required manpower. He was running an escort agency as well, transporting girls to hotels; this meant someone would have to advertise the service, make the arrangements, transport women to hotels and make arrangements with the hotels themselves so that such activity could take place. The appellant had given evidence of being drugged and had referred to guns. It was most unlikely that M would be operating in isolation if he had access to drugs, guns and several houses. She pointed out that the appellant had been subjected to sadistic treatment which indicated that M had arrangements in place to serve a special clientele. These men had to be sought out as such 'services' could not be openly advertised. That suggested an infrastructure. She said it was common for traffickers to give victims

false passports because if they escaped and approached the police or were found in raids, they would be prosecuted for possession of false documents.

44.

Ms Skrivankova was asked about the lack of any action following the appellant's referral to the UKHTC by the Poppy Project in March 2007. She expressed surprise that no investigation had been carried out. She stated that the UK was bound by certain agreements and had a policy to combat trafficking. She would have expected this information to have been investigated.

45.

With regard to the availability of assistance and shelters in Thailand, the witness stated that assistance was not readily available. She agreed there were shelters but emphasised that these were temporary and were not equipped to deal with long-term situations; moreover, they focused on giving help to those trafficked into Thailand.

46.

The witness was asked whether financial assistance alone would be sufficient to enable the appellant to integrate. She replied that migrants returning with cash were often stopped at the border and asked for money as a bribe. They were easily identifiable because of the type of documents they were travelling on and officials were aware that they might have been assisted under certain schemes here; hence they were targeted. Given the appellant's long absence and the fact that she would be returning from Europe, there would be a perception that she had worked abroad as a prostitute. She would find it difficult to obtain work without qualifications or references. Due to the recession, and the closure of factories, hundreds of thousands of factory workers had turned to the sex trade. She expressed concern about the risk to the appellant of being targeted or being forced by her circumstances to turn to the sex trade. She stated that former victims of trafficking were more vulnerable to being re-trafficked because they were seen as ideal victims. They already knew the business and knew how to be compliant and did not have to be taught how to obey. She was clearly a lucrative investment to her trafficker. If she had been servicing 20 men a day at a cost of between £50 and £100, the value could be easily assessed. It was important to note that the appellant herself never received any money.

47.

In cross-examination the witness was asked whether she had ever been to Thailand. She said she had. The last time was 2008 when she attended a meeting there. She was asked to explain the benefit to traffickers in issuing their victims with false passports. She replied this was so they would be prosecuted if caught by the police. She explained it was unlikely that the authorities would believe a woman who could not even name the person from whom she obtained the passport. Many victims had been prosecuted, like the appellant herself, and Article 26 of the Council of Europe Convention had been inserted to prevent punishment in such circumstances. It was put to her that as the appellant now spoke English, she would be less vulnerable to traffickers. Ms Skrivankova replied that language was not the only element that came into play. She added that there were trafficking gangs who focused on Eastern Europe as well and that the destination country could just be changed in a case such as the appellant's.

48.

With regard to the prospect of finding employment on return in Thailand, the witness stated that the appellant had no qualifications and no recent references. Her knowledge of English in itself would not necessarily find her a job. The information she received from colleagues based in Bangkok was that

work in the lower end of the market, i.e. employment without qualifications, was the hardest to come by. Further, the appellant's vulnerability had to be borne in mind. There was still a perception that women returning to Thailand without a husband or money had engaged in the sex trade.

49.

As for relocation, it would be very difficult to find a safe place which would provide an opportunity for work. Most employment was related to the entertainment industry and entailed sex work. Traffickers worked in that area. Their agents reached out to poor communities where they expected less resistance. There was a recent case in which Thai workers were found in a factory in Romania. That indicated that people could be trafficked from anywhere to anywhere.

50.

In re-examination the witness was asked whether it was common in her experience for victims of trafficking to denounce their traffickers to the police when they were arrested. Ms Skrivankova replied that this was very uncommon. She said that fear, a lack of understanding, the language barrier and the fact that the police were usually men, made disclosure very uncommon at that stage. That completed the oral evidence.

Submissions

Respondent's submissions

51.

Ms Akbar relied upon the refusal letter. She accepted that most facts were not in dispute and the issue to be resolved was the risk to the appellant on return, including the risk of re-trafficking; this entailed a finding on whether M was involved with organised crime and/or Thai immigration officials, and whether a sufficiency of protection would be available. She submitted that the appellant's attempt to return to Thailand in 2006 undermined her claim to fear for her safety on return. Had she genuinely believed that M had been part of a gang and that he would find her, she would not have been willing to return. The appellant had lived with M for six months and if he was part of a gang she would have known this. The remarks made by an immigration officer at the airport in Thailand proved nothing; it was just an assumption by the appellant that the official was involved in a gang. In any event, given the time that had lapsed, it was unlikely that an immigration official would remember her or that she would be traced.

52.

Ms Akbar submitted that the case of SB (PSG – Protection Regulations – Reg 6) Moldova CG [2008] UKAIT 0002 was very different to the appellant's case. The appellant in SB had gone to court and given evidence about her trafficker and he had then been released. It had also been found that there was a lot of discrimination against trafficked women in Moldova. M had not tried to trace the appellant and he had not contacted her family. The appellant had not therefore established that she would be re-trafficked on return. Further, there was a sufficiency of protection available to her. This was confirmed by the US report on trafficking. The appellant was wiser now. She did not need to return to Pattaya. She could relocate to any part of Thailand. She had worked in Thailand before coming to the UK and could find work if she returned.

53.

It was submitted that the appellant's mental health had improved and the latest medical report showed no current suicide risk. She was not on any medication and was fit enough to try and help others. She would not try and commit suicide because she had a daughter and aunt in Thailand and a

partner in the UK. He had confirmed he would visit her. The appellant would have a support structure in Thailand and she could obtain counselling if required. Facilities were available and the government recognised that victims of trafficking needed help. There was no objective evidence that the appellant would be stigmatised for her past. She did not belong to a social group and the human rights convention was not engaged either. The appellant and her partner did not live together and had no idea of when they planned to marry. The emotional support he might provide her with could continue if she returned to Thailand. She could apply for entry clearance from there. The interference in her family life would be proportionate. Her private life showed nothing exceptional and could continue in Thailand. The case of Y and Z (Sri Lanka) [2009] EWCA Civ 362 differed from the appellant's circumstances in that those appellants were found to be suicidal. Because they feared the Sri Lankan government, it was found that they would not try to seek treatment. The appellant, however, did not fear the Thai government. The appeal should be dismissed.

Appellant's submissions

54.

Ms Brewer relied on her skeleton argument. She submitted that the evidence pointed in only one direction and that was for the appeal to be allowed. She submitted that the respondent had fallen far short of his obligations under Article 4 and the UN Convention. The intelligence the appellant had provided in a substantive interview had not been investigated despite her referral to the UKHTC by the Poppy Project. The respondent was making suppositions in the appellant's case without undertaking any investigations. The respondent had focused on what the appellant believed but that was immaterial. It was important to consider the facts that had been accepted and the interpretation of those facts by the experts. M had been profiled as a key player, a recruiter, by an expert who advised the government. The appellant's account of how she got to the UK was not disputed; what was challenged was the interpretation of those facts. Detailed evidence had been given by an expert that the facts showed organisation and a sophisticated operation. The appellant spoke barely any English at the time she attempted to return to Thailand and she suspected that immigration officials may have been linked to her traffickers. She was arrested and prosecuted for possession of false documents and it was not credible that she would have sought to denounce her traffickers in such circumstances. The report by Jackie Pollock, Executive Director of Migrant Assistance Programme (MAP) in Thailand, explained how the appellant would be flagged up on her return. Neither that report nor the contents of Ms Skrivankova's report had been rebutted by the respondent.

55.

Miss Brewer submitted that the appellant would not feel able to access shelters in Thailand because she had been trafficked with the complicity of Thai officials. The evidence demonstrated that trafficked victims were far more vulnerable to being re-trafficked. The previous immigration judge had found the appellant had little family support in Thailand and that was not a finding that had been challenged by the respondent when he sought reconsideration. The appellant would be at real risk of harm on return. She had worked before yet was trafficked. Finding employment on return did not, therefore, take away the risk.

56.

The appellant was a member of a particular social group on account of her gender, the case of Fornah and K [2006] UKHL 46 was relied upon. Gender was an innate characteristic and there was no need to show discrimination in society over and above that experienced because of gender. Women in Thailand already had a lower social status.

57.

Evidence had been given by an expert on the appellant's mental state both here and if she were to be returned. Her case was on all fours with Y and Z . With regard to Article 8, it appeared to be accepted that family life had been established. That resulted in situations as in Chikwamba [2008] UKHL 40 and Beoku-Betts [2008] UKHL 39; why should she return simply to make an entry clearance application. She would have to disrupt her therapy to do so and would lose the support network she had here. The appeal should be allowed.

58.

As there had been several references to the Council of Europe Convention, we invited Ms Brewer to make that document available to us. Although she undertook to do so in the next few days, that document has not been received since the hearing. Ms Akbar did not object and Ms Brewer also undertook to make a copy available to her.

59.

At the conclusion of submissions we invited the parties to leave the hearing room so that we could discuss the case with a view to deciding whether it would be possible to give an oral decision there and then. After a period of consultation the parties returned and we indicated that we would be allowing the appeal under Article 3 but that we reserved our decision on all the other issues. We now give our determination and reasons.

Country material

60.

Ms Brewer did not refer us to any country material, either in her skeleton argument or in oral submissions. We have, nevertheless, considered the background material submitted by the appellant's representatives and the IAS research analysis papers contained in the bundle which consist of extracts from various reports some of which are now several years out of date. We found the format of the bundle, which was not properly paginated or indexed, to be particularly unhelpful, given its size. We have also considered the material to which we were referred by Ms Akbar.

61.

We have considered the US Trafficking in Persons (TIP) Report (June 2009) relied upon by the respondent. The report covers the period of April 2008 through March 2009 and is compiled using information from U.S. embassies, foreign government officials, nongovernmental and international organizations, published reports, research trips to every region, and information submitted to the US State Department . There are three Tiers of countries as designated by the US government, of which Tier 1 denotes countries where the state is considered to have complied fully with minimum standards and Tier 3 which denotes countries not fully complying with minimum standards and not making an effort to do so. Thailand is designated as a Tier 2 country because despite making considerable efforts, the Thai government still does not fully comply with the minimum standards for the elimination of trafficking. We note that Thailand is a source, transit and destination country for men, women, and children trafficked for the purposes of forced labour and commercial sexual exploitation and we note that steps are being taken by the government in an attempt to combat this. The report states the following:

The Royal Thai Government does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government began implementing a new, comprehensive anti-human trafficking law that came into force in June 2008 and trained the law enforcement community on the new legislation. In recent years, the number of annual convictions for

sex trafficking has declined. Three sex traffickers were convicted, and the government initiated prosecutions of 54 individuals for trafficking offences, including forced child labour, during the reporting period. The government did not, however, achieve a conviction for a labour trafficking offence during the year.

The government trained police officers, immigration officers, prosecutors and social workers on the new anti-trafficking law. A police division established in 2006 – the Children and Women Protection Division – continues to have nationwide jurisdiction to conduct anti-trafficking investigations. In addition, the police’s newly established Transnational Crime Coordination Centre collects and analyzes trafficking information and conducts strategic planning for anti-trafficking efforts along with the Office of the Attorney General’s Centre Against International Human Trafficking. Nevertheless, investigations for trafficking offences were disrupted or delayed because of frequent personnel turnover, and observers reported that cooperation between police and prosecutors on criminal (including trafficking) cases could be improved. There were reports that local police protected brothels, other sex venues, and seafood and sweatshop facilities from raids, and occasionally facilitated the movement of women into or through Thailand. In the absence of specific, credible allegations of official complicity in trafficking, the government did not report any investigations or prosecutions of Thai officials for trafficking-related corruption.

The government expanded its network of temporary shelters for trafficking victims from 99 to 138, with at least one temporary shelter in each Thai province. In 2008, the government’s shelters provided protection and social services for at least 102 repatriated Thai victims and 520 foreigners trafficked to Thailand. The Department of Consular Affairs in the Ministry of Foreign Affairs reported that 443 Thai nationals classified as trafficking victims were repatriated from a number of overseas locations. Thailand has not ratified the 2000 UN TIP Protocol.

62.

The respondent and the appellant both relied upon the US State Department report for 2008. We note the following extracts which are relevant to the appellant’s case:

Women and children (particularly girls) tended to be the most frequent trafficking victims for sexual exploitation. Women were trafficked to Japan, Malaysia, Singapore, Taiwan, Hong Kong, Bahrain, Australia, South Africa, Europe, and the United States, chiefly for sexual exploitation. Because foreign women frequently were unable to speak the language and were considered illegal immigrants, they were particularly vulnerable to physical abuse and exploitation.

The law allows for extradition of citizens; however, none were extradited for trafficking-related offences. Requesting-country nationals charged with trafficking-related crimes, including paedophilia, were extradited to Japan, Australia, Germany, Bahrain, the PRC, the United Kingdom, and the United States.

There were reports of bribe taking by some low- or mid-level police officers facilitating the most severe forms of trafficking in persons. There was no evidence that high-level officials benefited from or protected the practice. Compromised local police protected brothels and other sex venues from surprise raids. Officials found complicit in any part of the illegal economy rarely were prosecuted but instead were moved to positions thought to limit opportunities for future corruption. Funds for fighting trafficking or aiding its victims were limited. There was limited psychological counselling. Corruption remained widespread among police officers. Police officials suggested that low pay made them susceptible to bribes. There were reports that police tortured, beat, and otherwise abused detainees and prisoners, generally with impunity. There were also reports that some police officers

were involved in facilitating prostitution and trafficking in women and children. Trafficking in women and children for prostitution was a serious problem .

63.

The UN Committee monitoring compliance with women's anti discrimination Convention (20 January 2006) found that trafficking remained a problem throughout the country despite the government's initiatives to improve the status of Thai women. Results had not been seen due to widespread corruption. A crucial obstacle to the trafficking problem was reported to be weak law enforcement.

64.

The Bangkok Post (January 2008) reported traffickers as being in "deep collusion" with other cross border criminals including drug traffickers.

65.

The Freedom House report for 2007 noted that corruption was widespread in Thailand and that law enforcement officials were regularly paid to ignore trafficking. This is repeated in US report prepared by the Women's Commission for Refugee Women and Children (January 2006).

66.

The Nation (2 October 2007) reported that little progress had been made in protecting the rights of trafficked persons. It was reported that little assistance was given to women after they returned home and that the state rarely bothered to assess the mental condition of victims.

67.

No reference was made by Counsel either in submissions or in her skeleton argument to the country material submitted by the appellant and contained in the respondent's bundle. As it is several years old and as we were not referred to any part of it, we do not consider it necessary to summarise it here. It contains nothing that is not repeated in the more up to date material.

Report by the Poppy Project

68.

Contained in the respondent's bundle is a report from Daphne Kapetanaki, Senior Support Worker of the Outreach Team of the Poppy Project. It is dated 10 October 2007. The Poppy Project is the sole government funded project providing housing and support for women trafficked into the UK for forced prostitution. It has been funded (since March 2003) by the Office for Criminal Justice Reform of the Ministry of Justice to provide this service. It works closely with the UK Human Trafficking Centre and the Metropolitan Police Service Trafficking Team. At the time the report was prepared there were 35 spaces available for trafficked women in safe houses in London. We understand that since that time the capacity has increased by some 15-20 spaces. In order to qualify for housing support a woman must have been trafficked to the UK and forcibly exploited into prostitution within a certain time scale prior to referral.

69.

We are told that the appellant was referred to the Project on 26 July 2007. An initial assessment took place on 15 August 2007. It took a total of four meetings for the assessment to be completed because of the appellant's disturbed state of mind. She is described in the report as having been "very traumatised and vulnerable", "very distressed" and "tearful". She reported she was on medication for asthma. She had breathing problems and chest pains. She reported skin problems, toothache, headaches, loss of appetite and difficulty in remembering things. She disclosed symptoms of

gynaecological infection and injuries as a consequence of anal rape. She was found to have reported a number of symptoms of Post Traumatic Stress Disorder and was assessed as requiring long term support. Her account of trafficking was accepted.

Report of Klara Skrivankova

70.

Ms Skrivankova has prepared two reports. They address issues of trafficking, both generally and specifically in Thailand, forced labour indications, vulnerability factors and the risk of re-trafficking. The availability of state or other protection in Thailand, the risk to the appellant on return and the safety or reasonableness of internal relocation are also matters dealt with.

71.

The first report is dated 18 January 2008. The second is dated 15 August 2008. Ms Skrivankova is the Trafficking Programme Co-ordinator for Anti Slavery International, a member of the Stakeholder/ Consultative Group on Human Trafficking, chaired by the Home Office and the Solicitor General. At the time these reports were prepared she had worked in this field for seven years. Prior to her work for Anti-Slavery, she had worked as a project manager for 5 years with La Strada Czech Republic, a non-governmental organisation that supported trafficked persons and was a member of a leading European network of anti-trafficking organisations. It operated in nine European countries. Ms Skrivankova represents Anti-Slavery International at two expert sub-groups of the UKHTC: the Expert Co-ordination Team of the Alliance against Trafficking in Human Beings of the Organisation for Security and Co-operation in Europe and the Council of Europe in its campaign on the Convention on Action against Trafficking in Human Beings. In 2007 she founded the Trafficking Law and Policy Forum.

72.

Ms Skrivankova finds the appellant to be: "a vulnerable victim of trafficking that (sic) would be at high risk of re-trafficking in her country of origin and due to her personal and situational vulnerability as a consequence of trafficking experience as well as the potential risk from her trafficker". She finds that the "elements of deception, the abuse of power and position of vulnerability, threats or use of force and other forms of coercion are the most evident means utilised by the traffickers" to exploit the appellant. Referring to the relationship between M and the appellant, Ms Skrivankova states that:

Informal recruitment by friends and/or with friends is very common in trafficking cases. Traffickers posing as boyfriends are very skilled at targeting vulnerable women. Initially, they strive to develop a relationship of attachment, trust and dependence. Once such relationship is established, they manipulate the victim under false promises to travel with them abroad. In the place of destination the victim is either sold or exploited directly by the traffickers.

73.

Ms Skrivankova considers that there are other aspects of the appellant's account that meet the profile of trafficking; for example, being forced to take drugs, being moved from house to house and being escorted to hotels where she was forced to provide sexual services. These were all methods designed to prevent her from getting acquainted with her environment and to reinforce the power that the traffickers had over her. The use of fraudulent documents is another common method used by traffickers to exempt themselves from liability. Victims are often briefed that the authorities would not provide them with any help and assistance.

74.

Ms Skrivankova finds that the flourishing trafficking trade in Thailand poses a risk of re-trafficking. She also considers that the appellant would be at risk of reprisals from her traffickers and that the corruption and involvement of officials in trafficking increases that risk. She notes that there were “haphazard” facilities for long-term assistance for trafficked women in Thailand and that the appellant’s vulnerability is increased by the lack of her family support, her low level of education, the stigma attached to her as a prostitute and the attraction of her age to traffickers. She notes that young women separated from their families are frequently targeted by traffickers because it is unlikely that such women would be missed by anyone. Such socially excluded groups of women are acknowledged to be at risk of trafficking by trafficking experts. The UK government also recognised that poverty and social exclusion made people vulnerable to trafficking.

75.

Returned trafficked victims are said to be in a disadvantageous position. Their absence from the social system, from the labour market and the health insurance system, the lack of long-term support programs, the threat of reprisals preventing them from returning to their original social environment and their trauma all combine to make them particularly vulnerable.

76.

It is said that there is still discrimination against returning trafficking victims who were all assumed to have been working in the sex trade and there is an underlying assumption that they all have contracted HIV. There are other forms of discrimination and stereotyping of people who have been abroad, with the exception of those returning home with money or a rich husband.

77.

Ms Skrivankova reports that a person can be re-trafficked by the same traffickers to the same country or to a different destination; internal re-trafficking is also a possibility. Despite the anti-trafficking laws enacted in Thailand and anti-trafficking programmes, implementation in practice remains haphazard. Although a fund for returning trafficking victims was set up in 2005, it remains extremely hard for returned victims of trafficking to access it. Reports suggest that only women under the age of 25 were able to access funds and that detailed information and evidence from the victim is required by the government which the trafficked woman generally does not want to give. A feeling of mistrust on her part towards the authorities is common. Information received from a community self-help group in the north of Thailand indicates that only two members of the group had been able to access the fund.

78.

Services for women who had experienced any form of trauma are said to be very limited in Thailand and counselling services are scarce. Although there are 6 regional shelters for trafficking victims and some 97 shelters for abused women and children, they are closed facilities and women cannot access general educational services or skills training. In order to access housing through a shelter, information would have to be given by the appellant to the authorities. It is said to be the case that most women in Thailand are afraid of the police and are unlikely to ask for assistance in cases of sexual abuse and trafficking unless accompanied by a lawyer. Most centres are manned by policemen rather than women.

79.

Ms Skrivankova reports on the links between government bodies and trafficking, a fact which supports the appellant's belief that her trafficker was involved with Thai immigration officials.

80.

Ms Skrivankova's second report focuses on the risk to the appellant in the city of Bangkok and to the sufficiency of protection available to victims of trafficking in Thailand. She explains that women returning to Thailand on temporary travel documents are identified and perceived as trafficked women by airport officials. Many women have been reported to have been held by immigration officials for several hours and bribes have been demanded. Ms Skrivankova notes that if an immigration official was involved in the appellant's trafficking, he would have been able to have her name tagged so that she would be identifiable upon arrival and could be connected to the traffickers. The new biometric tracking system used at the borders makes it easy for officials to identify people entering and leaving the country. The appellant might also be seen as a potential threat to the implicated immigration officials because she would be able to identify him and report his corruption. Due to the lack of security of data, corrupt officials are easily able to obtain information about travellers.

81.

Ms Skrivankova explains that the trafficker would have invested funds in transporting the appellant to the UK and would be interested in getting her back so that her 'debt' could be repaid.

82.

With regard to the issue of sufficiency of protection, Ms Skrivankova is of the opinion that the appellant would find difficulty receiving protection from the police. She reports that most women in Thailand are afraid of the police and are unlikely to ask for assistance in cases of sexual abuse and trafficking. Options to relocate and socially integrate depend on qualifications and the ability to work. If relocating, an individual must also transfer his registration details and it is relatively easy to obtain such information through corruption. Overseas travel is a difficult option as most Thai women would find it very difficult to obtain a visa.

83.

Information from the Foundation for Women in Bangkok and the MAP Foundation indicates that there is a lack of long-term assistance in reintegration. This factor, along with poor access to the labour market and socio-economic need, are among the main factors why women end up re-trafficked. Given the appellant's mental health problems, resulting from the traumatic experience of trafficking, the appellant's situation would be even more difficult. Counselling services are scarce and although the general community often use monks as their counsellors, this would not be an option for the appellant given her history of sex work.

Report of Lucy Kralj

84.

Ms Kralj is a senior clinician and co-ordinator of the Women's Programme at the Helen Bamber Foundation. The Programme offers therapeutic and healthcare services. Ms Kralj is a senior trainee in psychotherapy on a Master's level study programme. She has significant experience working with torture survivors and with refugees and asylum seekers. She is involved in the education of external statutory and non-statutory organisations and is employed as an honorary lecturer at King's College, London. Prior to her current role, she worked as a specialist nurse for asylum seekers across four London primary care trusts. In 2003 she conducted a research study looking at primary care provisions for asylum seekers within London. In 2004 she undertook a review of the literature pertaining to the health consequences of the immigration detention of children. She is an active member of Medact's refugee health network. She regularly spends time working with internally displaced people in northern Uganda. In her role at the Foundation, she leads the work undertaken

with victims of sex trafficking and has close connections with the Poppy Project and other leading agencies involved in the healthcare and long-term treatment and support of victims.

85.

We are told that Ms Kralj's first report was prepared on 31 December 2007 although the date does not appear on the report itself. Ms Kralj confirms that the appellant was referred to the Foundation by her key worker in the safe house in which she resided. The appellant had expressed disturbing thoughts, suicidal ideation and feelings of extreme worthlessness; there were also concerns about her physical health.

86.

The report notes that the appellant suffers from repeated and severe headaches, frequently accompanied by episodes of vertigo. She has also suffered blackouts. It is thought that her symptoms are either caused or exacerbated by the extreme tension with which she has been living. The appellant is asthmatic and although on medication her symptoms are poorly controlled. She has a long-standing history of dermatitis which is being treated by her doctor. She suffers from ongoing pelvic pain which has been persistent since her repeated sexual assaults. Pelvic pain is said to be a well-documented symptom amongst sex workers and almost universal among survivors of rape and domestic violence. When menstruating, she passes clots of blood and suffers from dysmenorrhoea. The appellant also suffers from severe lower back pain and she attributed this to the repeated violence she suffered at the hands of her grandmother from the age of seven when she was beaten almost daily with a broom. The pain worsened since her enforced prostitution. She suffers from constipation and haemorrhoids which cause her constant extreme pain. During some sessions she has been unable to sit down due to the level of the pain. She was advised to have a full sexual health screening as a matter of priority. She suffers from vaginal fissures, the result of repeated violent intercourse. She also suffers from ongoing pain on micturition.

87.

The report notes the appellant's lack of memory of her family during childhood. It concludes that such blanks in childhood memory generally indicate significant emotional distress in childhood which has overwhelmed the child's emotional coping resources. The report confirms that both the appellant paternal grandparents died when she was a teenager. Her grandmother was physically and verbally violent towards her throughout her childhood. Her grandfather was powerless to defend or protect her as he was terrified of his wife.

88.

The appellant is described as having presented as a very distressed young woman in a great deal of emotional pain. The majority of her sessions with the Foundation were described as spent with the appellant in intermittent tears. She is described as having spoken on a number of occasions about feelings of negligible self worth and self-loathing. She is said to be afraid to confide in people whom she believes will laugh at her suffering. She has a long history of self harm. As a child she used to heat up needles in a flame and use them to burn herself and pierce the skin. She now bangs her head against walls. She feels no pain when she self harms but feels calmer afterwards. This behaviour is said to indicate a very high level of psychological distress and disturbance.

89.

The appellant is described as having made two significant suicide attempts, the first of which took place in Thailand shortly after the death of her grandfather. She also attempted suicide whilst in the

UK by taking 30 Anadin extra tablets with six glasses of Guinness. On that occasion she was admitted to hospital and referred on to the mental health team.

90.

The appellant expressed great fears for her relationship with her daughter who has refused to speak to her for the past year.

91.

The appellant admitted to isolating herself within the house where she lives and this was confirmed by the Medaille Trust. She described feeling different to others, somehow apart from the rest of society. She claimed to feel intense rage which she generally turned towards herself, resulting in self harm. When attempts were made to discuss her experiences in the UK, she showed what was described as abject terror and began to tremble and sweat.

92.

The report concludes that the appellant would be extremely unlikely to spontaneously access health care and would almost certainly not access psychotherapeutic care, were such care to be available in Thailand. Ms Kralj reports that this is due to the appellant's feelings of worthlessness and feelings that she has no right to receive care or nurture herself. It is notable that she was referred to the Helen Bamber Foundation by a third party following a recommendation made by the hospital. She felt unable to approach an organisation for emotional support herself. Ms Kralj finds that the appellant is suffering from a range of symptoms indicative of extreme traumatisation and Post Traumatic Stress Disorder. Her symptoms had been persistent for a length of time and were consistent with this diagnosis. She required psychological treatment and possibly medication to assist her with symptom control. Her history of self harm and suicide attempts placed her at greatly increased risk of further attempts with an increased likelihood of success. She last attempted suicide when she found out about the refusal by the Home Office. Grave concerns for the long-term health and well-being of the appellant were expressed in the absence of long-term and intensive therapeutic support.

93.

A second report was prepared in January 2010. Ms Kralj reports some improvement in the appellant's situation following regular work with her over 2 ½ years. Changes were noticeable over the last year with the appellant becoming less impulsive and more inclined to reach out for help than to isolate herself and resort to self-destructive behaviour patterns in times of distress. The report provides information on the appellant's relationship with AB. The appellant is described as being unsure initially about their relationship and of being mistrustful. Her partner, however, had proven himself to be stable and consistent. He encouraged the appellant to continue with her therapeutic work and over the past year their relationship has strengthened. Ms Kralj emphasises the importance of the appellant's support network of three intimately trusted people; herself, Ms Chipperfield and AB. She advises against removal from support at a time of such fragility of improvement. Such action, she finds, would be likely to have a profound and destructive impact upon the appellant's mental state and coping mechanisms. A return to an environment in which so much trauma had been endured would, without any doubt, harm the appellant. She would revert to her previous stage of permanent hyper-arousal and would be stripped of her new and adaptive coping mechanisms. Her history of self harm and impulsivity placed her at great risk should her support structures be removed. Although her progress was real and consistent, there remained a significant risk of reverting to hold coping mechanisms in the absence of the things and people the appellant now experienced as keeping her safe.

94.

We have also had produced to us five letters from Ms Kralj dated 29 October 2007, 22 January 2008, 22 May 2008, 9 August 2008 and 20 March 2009. These express concern for the appellant should she be subjected to rigorous examination at the hearing of her appeal and also report on the distress that the repeated adjournments have caused. It is confirmed that the appellant attended weekly sessions with the Foundation. Any interruption in her therapy, which had taken months of nurturing, would be extremely detrimental and likely to exacerbate her impulses towards self harm.

Report of Jacqueline Pollock

95.

Ms Pollock's report is dated 1 December 2008. She is a British national who has been working in Thailand for some 25 years. She is currently the executive director of the Migrant Assistance Programme (MAP) Foundation, a registered Thai NGO established in 1996 and registered in 2003. Ms Pollock has trained government officials and anti-trafficking units from Thailand and other Southeast Asian countries. Prior to her work at MAP, she worked for another Thai NGO, Empower Foundation, which is a sex workers' organisation. She was one of the consultants developing the first project proposal for the UNDP Task Force on combating trafficking in the Mekong sub region and was also a consultant for the development of the project for the UN Task Force to combat trafficking in Nepal. She has been involved with the Global Alliance against Trafficking in Women since it was founded. She has had direct contact with Thai and Burmese women working in the sex industry in Thailand and other countries and also with women who have experienced trafficking in Thailand and Japan.

96.

She reports that as a source country for trafficking, Thai women find themselves in East Asia, Europe, Australia, the Americas and South Africa. Figures for the number of people trafficked are not available and, where available, are only estimations. Thailand has no comprehensive record of missing persons.

97.

Ms Pollock discusses the likelihood of M being linked to gangs and/or to Thai Immigration in her report. She notes that a UK visa was obtained for the appellant. She notes that the Home Office refusal letter refers to the visa as being fake. She comments that to fake a UK or European visa in a Thai passport, there must have either been corruption in the Embassy or M must have been connected to gangs who fake visas. In order for him to have subsequently provided the appellant with a fake passport, he must have had connections with gangs who falsify passports. These activities suggest that the appellant's trafficking was not a one-off operation. Thai passengers leaving by air are required to pass through Immigration and be stamped out of the country. Ms Pollock notes that it would be highly unlikely that a false UK or European visa would pass through airline check-in counters and immigration officials unless M was complicit with them.

98.

Ms Pollock notes that the complicity of police and immigration officers has been documented in Thailand in trafficking cases. Intelligence reports indicate that some immigration officers at Don Muang International airport (through which the appellant left Thailand) were assisting smuggling rings. She cites the Economist as reporting on corruption amongst the border police. Extracts from the US State Department country report on human rights practices are also cited to show that corruption amongst police officers is widespread. Ms Pollock reports that according to an expert member of the UN Committee on the Elimination of Discrimination against Women, government

initiatives to combat human trafficking have not brought about the desired results, due to widespread corruption.

99.

Ms Pollock reports that on return to Thailand, Thai nationals must pass through immigration control where their passports are checked for the exit stamp and their return is entered into a computer system. If the appellant were to return on a passport which did not bear the details of her departure from the country, she would be questioned. If immigration officials were involved, they might at this point get word of her re-entry. If not alerted at this point, her re-entry is recorded in a computerised system and could be accessed by others.

100.

She reports that if those involved in the appellant's trafficking are informed that she has returned, it would be possible to locate her. She would have to go through several processes to reactivate her access to services and rights, including registration wherever she wanted to live, at the local council offices. It is only with this house registration document that she would be able to get access to health services, education and exercise her voting rights. Thailand uses a biometric system with information stored on the national ID card. There is not a strong system of protection of information and privacy laws so the sharing of information between different departments is not fully protected. Additionally, the ID card is online and information can be accessed through the 13 digit number. Ms Pollock reports that if the appellant relocated from her previous home and registered in her new location, it would be fairly easy to locate her. Even if she did not live in her home town and did not register, she would have to return home at some point; for example, for national and local elections as voting is mandatory in Thailand and so she could be tracked to her home.

101.

Ms Pollock notes that the fact that M spent time over a six month period with the appellant in Pattaya and some time priming her in the UK suggests that he expected her to bring him a good return over several years. She points out that the evidence suggests that the money traffickers gained from women selling sex overseas warrants a good deal of investment of time and money in the country of origin. Ms Pollock cites the arrest in 2008 of a retired British policeman in Bangkok who had allegedly been involved in shipping Thai women to the UK for prostitution. He travelled with the women in the UK before selling them into brothels. There is no information as to whether he was prosecuted or convicted.

102.

Ms Pollock reports that most women are trafficked overseas individually as large groups would draw attention. Couriers are paid air fare, accommodation and a fee to take one woman at a time. An article published in the Harvard Asia Quarterly reports the involvement of a wide range of participants. There is the initial recruiter, the agent who arranges travel documents, the escort who accompanies the woman overseas and the procurers who run the sex establishments and pay large sums of money for the acquisition of the women. In some cases, these networks also rely on the co-operation of government officials who turn a blind eye to violations, in return for bribes. Given the low expense of keeping a woman in Thailand, the investment is minimal compared to the income that could be generated to the traffickers once the woman was sold abroad.

103.

With regard to available services, Ms Pollock reports that these are very limited in Thailand. She notes that most women are afraid of the police and are unlikely to ask for assistance in cases of sexual

abuse and trafficking. Counselling services are limited, particularly in the provinces. The appellant's home province is one of the poorest areas of Thailand. Shelters are mostly manned by policemen and not women. The Witness Protection Act is difficult for returned victims of trafficking to utilise. Shelters provide housing, food and training for a limited period. They are mostly closed facilities and women are not free to come and go. The lack of freedom makes the centres feel like a place of detention and increases the sense of victimisation. The appellant would receive no assistance with finding housing or any other social services. Her level of education and the fact that she would be unable to provide references for work for a number of years limit opportunities for employment. Due to the global economic crisis, Thailand has experienced job losses in any event. Ms Pollock reports that it would be highly likely that the appellant would have to return to working as a waitress in a tourist area where she would work without a salary but obtain a commission on the sale of drinks. As such a commission is not usually sufficient to survive, many women also sell sex to customers. These areas are breeding grounds for recruiters and traffickers. Women who have experienced abuse and have low self-esteem are extremely vulnerable to being tricked and cheated by these traffickers.

104.

It is in the context of all this material that we assess the appellant's claim.

Findings and conclusions

105.

We bear in mind that the burden is on the appellant to make out her case to the lower standard and that we are able to take into account facts and evidence as at the date of the hearing.

106.

The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the "Trafficking Protocol") supplementing the 2000 United Nations Convention against Transnational Organized Crime provides an international definition of trafficking. Article 3 of the Trafficking Protocol reads:

(a) '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;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;...

107.

Trafficking is thus defined by the act, the means and the purpose.

Appellant's credibility

108.

We found the appellant to be a wholly credible witness. We note that her account is largely accepted by the respondent with the exception of her claim that M is involved in organised crime and/or has links with Thai immigration officials. The question of whether a sufficiency of protection would be

available to her or whether internal relocation would be a viable option are not so much matters of credibility as matters which turn on the background evidence. The respondent has accepted that the appellant was trafficked into the UK for sexual exploitation.

109.

The appellant has given a consistent account in all respects throughout the prolonged appeal proceedings. She has given oral evidence on two occasions and has prepared two witness statements; she has also been interviewed at length by the respondent and in the course of her therapy by Ms Kralj. When referred to the Poppy Project she underwent a full assessment which took four meetings to complete. We can find no discrepant evidence in any of that material. We found that the appellant tried her best to provide the information sought of her at the hearing before us. We note that the questions which led to her extreme distress concerned her daughter and M. We have regard to the evidence before us of Ms Kralj, both in oral and written form, that the appellant “shuts down” when questioned on these matters. In her report Ms Kralj described how the appellant is unable to function and cannot physically move when she is required to speak about her daughter. In her oral evidence Ms Kralj referred to the name of M sending shudders through the appellant. We were able to witness both of these reactions at first hand during the course of the appellant’s evidence. We find that her reactions were wholly genuine. We do not accept that she would have been able to dupe such a number of experts over such a prolonged period.

The expert evidence

110.

We have regard to the expertise and experience of Ms Kapetanaki, Ms Chipperfield and Ms Kralj in making our assessment of the appellant and the risk she is likely to face. They have all worked with her and are united in their view of her credibility and vulnerability. We have also given weight to the evidence of Ms Skrivankova and Ms Pollock on the situation in Thailand and how it affects the appellant. They have also provided evidence on the availability of facilities. We note their long-term experience in the field of trafficking. We found Ms Pollock’s evidence to be particularly helpful given her 25 years of work in Thailand. Although we do not accept that it can be said that all trafficked women in Thailand are at risk of being re-trafficked, we find that generally their evidence sits well with the other country information that has been submitted from more familiar sources. The consistency of their conclusions and the corroboration of same by the other material before us are factors which we find reinforces the weight we have given to them (as per NA v the UK (Application no. 25904/07) [2008] ECHR 616). The information provided about the modus operandi of traffickers comes, we accept, from first hand knowledge on the part of Ms Pollock and Ms Skrivankova who have both worked with trafficked women.

111.

We are bound to say that we found Ms Skrivankova’s oral evidence far more helpful and compelling than her reports, particularly the first, which appeared to rely heavily, if not solely, upon the work of Ms Pollock and little upon her own direct knowledge which became apparent in the second report and even more so in the course of oral evidence. There were also a few errors in the first report which suggested that the contents were in a general format used for other applicants; for example, there was another woman’s name in one part of the first report and there is a reference to the appellant’s children, although she has just one.

112.

We found some of the statements made in the reports of Ms Pollock and Ms Skrivankova to be quite sweeping. For example, we do not find it reasonably likely that all women returning to Thailand from Europe would be perceived as prostitutes. Nor do we accept that most Thai women would be fearful of the police. It may be that Ms Pollock and Ms Skrivankova meant to refer to most trafficked women; that is more believable. We also reject the suggestion that all women would be at risk. The assessment of risk on return is a matter of fact finding that we must undertake and we find that it must be done on a case by case basis. We say more about what will be relevant factors later. Nevertheless, despite these limitations and criticisms, we have found the evidence to be helpful.

The appellant's attempt to return to Thailand

113.

The respondent has relied heavily on the appellant's failed attempt to leave the UK for Thailand in 2006 after she escaped from her abusers. He also relies on the appellant's failure to claim asylum at the point when she was stopped from embarking at Heathrow Airport.

114.

We find that the first point raised by the respondent would appear to be the strongest. In considering this part of the appellant's evidence, we were greatly assisted by the evidence of Ms Kralj who has worked with the appellant for some three years on a regular basis. We accept fully that the appellant's actions must be considered in the context of her experiences at that time. She had just escaped from what amounts to sexual slavery over an eight month period. During this time she had been subjected to constant abuse of a physical, sexual and emotional nature. She had been locked up, occasionally starved, deprived of sleep and made to work for up to twenty hours a day. She was subjected to perverted and sadistic acts. She was whipped, she was drugged and she was raped anally and vaginally. She was made to perform oral sex. Intercourse was regularly unprotected. Her life was threatened as was the life of her daughter. She was kept isolated from the outside world and her passport was taken away from her. She had already suffered the consequences of one failed attempt to escape. She was then offered the chance of escape by a regular client who, although taking her to a friend's house and eventually giving her the money to purchase a ticket to Thailand, expected and obtained sex from her in return.

115.

It is difficult to imagine how the appellant must have felt at that time but faced with the choice of remaining in the UK where she had only known misery and abuse, where she knew no one and had nowhere to go, or of returning home where, despite any dangers she might face, she at least had her daughter, we can understand why she acted as she did. Ms Kralj explained that in fact the appellant had decided to return to Thailand "to die" and that is what the appellant also indicated at her interview. We can understand that given her experiences, she felt that her choices were very limited. We accept that her feelings of shame, unworthiness and despair as a result of being trafficked were compounded by the hard life that she had growing up in Thailand.

116.

We do not find that by seeking to return to Thailand instead of approaching the authorities in the UK and claiming asylum, that the appellant showed a lack of fear of persecution. We note the UNHCR guidelines which advise that women may feel ashamed of what has happened to them or may suffer from trauma caused by sexual abuse and violence (paragraph 48). The evidence we have before us confirms that the appellant experiences feelings of defilement, shame and a lack of self-worth. We also note the findings of Rodger Haines QC in his paper on gender related persecution prepared for the

UNHCR's San Remo expert round table in 2001 (referred to by Lord Bingham in Fornah and K and in Ms Brewer's skeleton argument). On the issue of how trafficked victims reacted when they encountered the authorities, he warned that they are highly unlikely to reveal what happened to them and that they often disclose a distrust of the authorities in the host state. We also note that it is unlikely that the appellant would have been in a situation where only female officials would have been present and we find that the presence of male officials would have made it even less likely that she would have felt able to disclose her problems to the authorities. We note that the API gender guidelines advise Home Office caseworkers that such an applicant's failure to disclose information relating to her claim should not automatically count against her as there may be many reasons for this including feelings of guilt and shame. Ms Skrivankova also gave evidence that in her experience it was very uncommon for trafficked women to denounce their abusers to the authorities when first encountered.

117.

We do not, therefore, consider that in seeking to leave the UK and return to Thailand, rather than 'coming clean' with the British authorities, the appellant demonstrated that she had no fear of return. Nor do we find that that action detracts in any way from her belief that M was involved with organised crime with links to the Thai authorities.

The situation in Thailand

118.

No estimates are available for the number of women trafficked from Thailand. We are aware that UN estimates put the worldwide figure at close to 4 million. The evidence confirms that, despite the lack of statistics, trafficking is described as a serious problem in Thailand and Ms Skrivankova gave evidence that a large percentage of trafficked women are in fact re-trafficked. Ms Pollock confirmed that there is no comprehensive record of missing persons. It seems to us that women who are without familial support would have no one to report their absence if they 'disappeared'; that would be a great attraction to traffickers.

119.

We acknowledge from the background material before us that the Thai government is taking steps to tackle the serious problem of trafficking of women and children, not just of Thai citizens trafficked out of the country but also of foreigners (mainly Burmese) trafficked into Thailand. The US State Department report confirms that women and young girls tended to be the most frequent trafficking victims for sexual exploitation although there are also reports of some men falling prey to traffickers. The government began implementing a new, comprehensive anti-human trafficking law which came into force in June 2008 and trained the law enforcement community on the new legislation. Despite this, according to the US Trafficking in Persons report 2009, the number of annual convictions for sex trafficking has declined.

120.

A new police division established in 2006 - the Children and Women Protection Division - continues to have nationwide jurisdiction to conduct anti-trafficking investigations but there is no evidence of what it has achieved. There is also a newly established Transnational Crime Coordinator Centre which is said to collect and analyse trafficking information but no statistics are available.

121.

Despite these efforts it is reported that as yet Thailand does not fully comply with the minimum standards for the elimination of trafficking and that for this reason it is designated as a Tier 2 country

by the US government. We also note that at the time the US TIP report was prepared, Thailand had not ratified the 2000 UN Trafficking in Persons protocol.

122.

There are widespread reports of the complicity of police officers and border officials with traffickers and criminals. We say more about this below. The issue of available facilities is also dealt with later on in our determination.

M's link to organised crime and/or Thai immigration officials

123.

The appellant maintains that M is involved with gangs and that he has links to Thai immigration officials. She relies on what she heard an immigration officer say when she was leaving Thailand. Ms Brewer is right to point out in her submissions that the respondent does not dispute that the appellant heard such a comment or that she was able to leave in the manner she did, without having had a personal interview with the British Embassy or providing any documentary evidence in support of the visa application made for her; it is the interpretation of those facts and the appellant's belief in M's influential position that is disputed. We agree with Ms Brewer that in the face of the available evidence, the appellant's belief really is immaterial for the purposes of our findings on M's position. This is because of the profile that can be drawn from what is known and accepted about him.

124.

In her oral evidence Ms Skrivankova gave us the following indicators which she argued confirmed the profile of M as someone belonging to an organised and sophisticated operation. M, described as a British citizen, spoke Thai, had a flat in Pattaya, groomed the appellant both in Thailand and briefly in the UK before enslaving her as a prostitute, was able to fly her to the UK with a British visa and later obtain a false passport for her. He had access to at least three brothels where several women worked and he could access drugs and weapons. Clearly he could not have done all this on his own. The significance of these indicators is set out in greater detail in the summary of Ms Skrivankova's evidence earlier in this determination and it is unnecessary to repeat it at this stage. We have taken account of what she has told us and of the view she has formed.

125.

That view is also expressed by Ms Pollock in her report. She notes that obtaining a visa for a poor Thai woman would inevitably involve a visit to the British Embassy, the production of a great deal of supporting documentary evidence and usually an interview. We note that her conclusion that M must have therefore had connections with those who were able to produce false visas (if the visa was false which we do not know) or within the Embassy. We find that the former conclusion is a reasonable one and that the latter may be a possibility. It is certainly a matter that the Foreign Office may wish to investigate. Ms Pollock states that it would not be possible to pass through Immigration in Thailand with a fake visa unless M was complicit with an Immigration Officer. That appears reasonable to us. Given the appellant's ability to enter the UK on that visa, however, we are inclined to the view that it could have been fraudulently obtained but through the proper channels.

126.

The issue of corrupt immigration officials is not just a matter addressed by the appellant's experts but is supported by the country information submitted by the respondent and the appellant. Ms Skrivankova told us of the paper (as yet unpublished) prepared last year by the UN Office on Drugs and Crime which discusses the corruption of immigration and other officials as a being a key element in the trafficking business. An article in the Economist (cited in Ms Pollock's report) noted the

complicity of border police in trafficking, as has the US State Department report. Ms Pollock cites an expert member of the UN Committee on the Elimination of Discrimination against Women as reporting that government initiatives to combat trafficking have been hampered by widespread corruption and she speaks of intelligence reports that immigration at Don Muang Airport, through which the appellant travelled, were assisting smuggling rings. That is confirmed by the UN Committee monitoring compliance with women's anti discrimination conventions which reports that a crucial obstacle to the trafficking programme was weak law enforcement and widespread corruption. The Bangkok Post and Freedom House make similar allegations. In the context of this evidence we find that it is reasonably likely that M has links to government officials and to organised crime. We do not accept the respondent's submission that he acted alone. It is difficult to see how that would be possible, given the accepted facts about his activities.

127.

The respondent argued that the appellant would have family support if she returned to Thailand. We bear in mind, however, that the immigration judge who determined the last appeal found that the appellant would be without family support on return to Thailand and that finding was not challenged by the respondent when he sought reconsideration. The appellant was brought up by her paternal grandparents; both are now deceased. She never knew her mother or any relatives on her mother's side and had almost no contact with her father with whom she had never lived and who has another family. She has a paternal aunt and female cousins who appear to be caring for her child but it can hardly be said that they would be in a position to provide her with any effective support. It must also be borne in mind that having family support before she left Thailand, did not prevent her from being trafficked in the first place.

Particular social group (PSG)

128.

The respondent, whilst accepting the appellant's core claim, maintains that it does not engage the Refugee Convention as the appellant is not a member of a particular social group, would not face a likely risk of persecution, and would be able to access protection in her country of origin. We note that in HC and RC (Trafficked women) China CG [2009] UKAIT 00027 a Senior Home Office Presenting Officer conceded that in light of what Baroness Hale said in the House of Lords in Hoxha [2005] UKHL 19 (see paragraph 138 below) and the determination of SB, a person who had been a victim of trafficking could be a member of a PSG (paragraph 36; HC and RC). Ms Akbar, however, maintained the position set out in the refusal letter.

129.

We have considered The Refugee or Person in Need of International Protection (Qualification) Regulations 2006. The relevant provisions state:

3. In deciding whether a person is a refugee or a person eligible for humanitarian protection, persecution or serious harm can be committed by:

(a) the State;

(b) any party or organisation controlling the State or a substantial part of the territory of the State;

(c) any non-State actor if it can be demonstrated that the actors mentioned in paragraphs (a) and (b),

including any international organisation, are unable or unwilling to provide protection against persecution or serious harm. ...

5. (1) In deciding whether a person is a refugee an act of persecution must be:

(a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a).

(2) An act of persecution may, for example, take the form of:

(a) an act of physical or mental violence, including an act of sexual violence;

(b) a legal, administrative, police, or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;

(c) prosecution or punishment, which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under regulation 7.

(3) An act of persecution must be committed for at least one of the reasons in Article 1(A) of the Geneva Convention.

6 . (1) In deciding whether a person is a refugee:.....

(d) a group shall be considered to form a particular social group where, for example:

(i) members of that group 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

(ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

130.

We take note of the respondent's guidance on gender issues in asylum claims and of the particular section on trafficking. Section 8 states that the forced recruitment of women for the purposes of forced prostitution or sexual exploitation may amount to persecution. We note that acts of sexual violence fall to be considered as persecution under Regulation 5 (2) (a). We have no hesitation in finding that the nature of the ill treatment suffered by the appellant, amounts to persecution under the definitions set out above. The respondent does not dispute any part of the appellant's description of the ill treatment endured.

131.

We have had regard to the UNHCR Guidelines on International Protection (HCR/GIP/06/07 of 7 April 2006) which provide interpretative legal guidance on the application of Article 1A (2) of the 1951 Convention to victims of trafficking and persons at risk of being trafficked. It is quite rightly

acknowledged that not all victims or potential victims of trafficking fall within the scope of the refugee definition (paragraph 6).

132.

We have found the following sections to be helpful:

15. Asylum claims lodged by victims of trafficking or potential victims of trafficking should thus be examined in detail to establish whether the harm feared as a result of the trafficking experience, or as a result of its anticipation, amounts to persecution in the individual case. Inherent in the trafficking experience are such forms of severe exploitation as abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labour, removal of organs, physical beatings, starvation, the deprivation of medical treatment. Such acts constitute serious violations of human rights which will generally amount to persecution.

16. In cases where the trafficking experience of the asylum applicant is determined to be a one-off past experience, which is not likely to be repeated, it may still be appropriate to recognize the individual concerned as a refugee if there are compelling reasons arising out of previous persecution, provided the other interrelated elements of the refugee definition are fulfilled. This would include situations where the persecution suffered during the trafficking experience, even if past, was particularly atrocious and the individual is experiencing ongoing traumatic psychological effects which would render return to the country of origin intolerable. In other words, the impact on the individual of the previous persecution continues...

17. Apart from the persecution experienced by individuals in the course of being trafficked, they may face reprisals and/or possible re-trafficking should they be returned to the territory from which they have fled or from which they have been trafficked. For example, the victim's cooperation with the authorities in the country of asylum or the country of origin in investigations may give rise to a risk of harm from the traffickers upon return, particularly if the trafficking has been perpetrated by international trafficking networks. Reprisals at the hands of traffickers could amount to persecution depending on whether the acts feared involve serious human rights violations or other serious harm or intolerable predicament and on an evaluation of their impact on the individual concerned. Reprisals by traffickers could also be inflicted on the victim's family members, which could render a fear of persecution on the part of the victim well-founded, even if she or he has not been subjected directly to such reprisals. In view of the serious human rights violations often involved, as described in paragraph 15 above, re-trafficking would usually amount to persecution.

18. In addition, the victim may also fear ostracism, discrimination or punishment by the family and/or the local community or, in some instances, by the authorities upon return. Such treatment is particularly relevant in the case of those trafficked into prostitution. In the individual case, severe ostracism, discrimination or punishment may rise to the level of persecution, in particular if aggravated by the trauma suffered during, and as a result of, the trafficking process. Where the individual fears such treatment, her or his fear of persecution is distinct from, but no less valid than, the fear of persecution resulting from the continued exposure to the violence involved in trafficking scenarios. Even if the ostracism from, or punishment by, family or community members does not rise to the level of persecution, such rejection by, and isolation from, social support networks may in fact heighten the risk of being re-trafficked or of being exposed to retaliation, which could then give rise to a well founded fear of persecution.

133.

The European Union Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (the EU Qualification Directive) expressly permits member states to apply standards more favourable to the applicant than the minimum laid down. Article 10(1)(d) deals with the issue of a PSG but, as was noted in *SB* the only difference between Article 10 (1)(d) and the corresponding Regulation 6 (1)(d) of the Qualification Regulations (cited above) is that the words 'in particular' (in the first line) have been replaced by 'for example' . In its comments on the Directive, the UNHCR advised that to avoid any protection gaps, member states should reconcile the two approaches to permit alternative rather than cumulative application of the two concepts. This is referred to in *Fornah and K* at paragraph 15 where UNHCR's definition of a PSG is set out.

134.

Although we were urged by Ms Brewer to find that the two sub sections should be read as alternative concepts, we are unable to accept that. The matter was considered at length in *SB* where the judgment of *Fornah and K* was addressed. It was noted by the Tribunal that the remarks of their Lordships were obiter. After lengthy submissions on the point the Tribunal found that the two sections had to be read together and that any other interpretation would only "do violence" to the adjunctive "and" (paragraph 71). The Tribunal found:

It would also be inconsistent with the insistence in the Jurisprudence we have considered that the question as to whether the group is a particular social group for the purposes of the Geneva Convention must always be considered in the context of the society in question.... if sub paragraphs (i) and (ii) are alternatives, then it may be said that it is possible to identify a particular social group without reference to evidence relating to any particular country. For example, it may be said that as 'former victims of trafficking' or 'former victims of trafficking for sexual exploitation' are, per se, members of a particular social group without the need to consider the evidence relating to the society in question, which does not seem to us to make sense. It is possible that former victims of trafficking for sexual exploitation may be members of a particular social group in one country, but not in another (paragraphs 71 and 72).

135.

Ms Brewer, in her skeleton argument, referred us to several judgments which give guidance on how the Refugee Convention and the provisions regarding social groups should be applied.

136.

We were referred to Lord Bingham's observation in *Fornah and K* (at paragraph 10) that:

It is well-established that the Convention must be interpreted in accordance with its broad humanitarian objective and having regard to the principles, expressed in the preamble, that human beings should enjoy fundamental rights and freedoms without discrimination and that refugees should enjoy the widest possible exercise of these rights and freedoms....

137.

The following observation by Sedley J in *Shah* [1997] Imm.A.R.145,153, commenting on the complexity of such issues, was cited by Lord Steyn in *Islam v. Secretary of State for the Home Department Immigration Appeal Tribunal and Another, Ex Parte Shah* , [1999] UKHL 20:

Its adjudication is not a conventional lawyer's exercise of applying a legal litmus test to ascertain facts; it is a global appraisal of an individual's past and prospective situation in a particular cultural,

social, political and legal milieu, judged by a test which, though it has legal and linguistic limits, has a broad humanitarian purpose.

138.

These views were echoed by Lord Hope in *Hoxha* when he spoke about the “broad humanitarian principles which underlie the Convention” (paragraph 6), the “large and liberal spirit” that needs to be called for “when a court is asked to say what the Convention means” (paragraph 8) and of the Convention and the Protocol as “living instruments, to which the broadest effect must be given to ensure that they continue to serve the humanitarian principles for whose purpose the Convention was entered into” (paragraph 7).

139.

The social group put forward by Ms Brewer was ‘women in Thailand’. We do not accept that, and find that it goes too far given the documentary evidence before us on women in Thailand generally. It was found in *SB* that where the PSG was the broad one of gender, then discrimination against the gender, i.e. discrimination in the wider sense, must be shown to exist (paragraph 53). We do not find that it has been shown that all women in Thailand face discrimination or that all women would be unable to access protection or assistance from the state. Unlike the situation for women in the other countries listed in Ms Brewer’s skeleton argument, we find that there is insufficient documentary evidence before us to lead to a finding that women in Thailand form a particular social group.

140.

We do find, however, that the appellant falls into a narrower social group; that of ‘young females who have been victims of trafficking for sexual exploitation’. We do not seek to define a specific age group but the appellant as a woman in her early twenties when she was trafficked can clearly be described as young. We adopt the words of Baroness Hale in *Hoxha* and find that “women who have been victims of sexual violence in the past are linked by an immutable characteristic which is at once independent of and the cause of their current ill-treatment...are certainly capable of constituting a particular social group under the Convention” (paragraph 37).

141.

We find that the shared past experience of being trafficked for sexual exploitation amounts to a common, immutable characteristic. We take note of the UNHCR guidelines which advise that:

In establishing this ground it is not necessary that the members of a particular group know each other or associate with each other as a group. It is, however, necessary that they either share a common characteristic other than their risk of being persecuted or are perceived as a group by society. The shared characteristic will often be one that is innate, unchangeable or otherwise fundamental to identity, conscience or the exercise of one’s human rights. Persecutory action against a group may be relevant in heightening the visibility of the group without being its defining characteristic. As with the other Convention grounds, the size of the purported social group is not a relevant criterion in determining whether a social group exists within the meaning of Article 1A(2). While a claimant must still demonstrate a well-founded fear of being persecuted based on her or his membership of the particular social group, she or he need not demonstrate that all members of the group are at risk of persecution in order to establish the existence of the group (paragraph 37). It should therefore be noted that it is the past trafficking experience that would constitute one of the elements defining the group in such cases, rather than the future persecution now feared in the form of ostracism, punishment, reprisals or re-trafficking. In such situations, the group would therefore not be defined solely by its fear of future persecution (paragraph 38).

142.

We also take note of the findings in SB (PSG - Protection Regulations - Reg 6) Moldova CG [2008] UKAIT 0002 and PO (Trafficked women) Nigeria CG [2009] UKAIT 00046. In both cases the Tribunal found that former victims of trafficking were capable of constituting a PSG.

143.

We referred above to paragraph 16 of the UN Guidelines on Trafficking. The view taken by the UN appears to be that the future risk of persecution need not be considered in cases where applicants have been so atrociously ill treated that they are still suffering psychological trauma as, it is argued, the impact of persecution on the appellant continues. This argument arises out of the application of Article 1 C (5) of the 1951 Convention which provides that even where the circumstances which gave rise to the claim for refugee status have ceased to exist, a person who is able to invoke "compelling reasons arising out of previous persecution" for refusing to avail himself of the protection of his country of nationality. The application of 1 C (5) to 1 A was a matter considered by the House of Lords in Hoxha . It was made clear in that judgment that whilst it is one thing to withdraw refugee status from someone who has been found to fear persecution and to whom such status has already been granted, it is another to grant it in circumstances where there is no ongoing fear, simply on the basis of past persecution. In the case of our appellant, status has not of course been granted and so she cannot argue, and indeed has not done so, that her past persecution alone entitles her to status under the Convention. Her claim is that she has an ongoing fear. The reason we have found the guidelines helpful, however, is that they deal specifically with victims of trafficking and because they acknowledge the relevance of the impact of past persecution on an applicant.

Persecution

144.

An assessment of whether an applicant as a member of a particular social group is likely to face persecution will be case specific. We do not accept that it can be argued that all trafficked women are at risk. The risk will depend on the age and personal circumstances of the applicant. Factors such as her marital status, domestic background, familial support network, educational level, qualifications, past work experience and availability of employment are all relevant factors and this list is not exhaustive. Also significant will be the applicant's state of mind. Someone suffering ongoing trauma will be more vulnerable to the risk of persecution because of an inability to re-integrate into society. The reliance upon a shelter to provide help may also ironically place an applicant at risk because it will identify her as a former trafficked victim and as a woman without the means of other support. Such a vulnerable female may well be targeted by traffickers. We referred earlier to the absence of a missing persons list in Thailand and we observed that a woman without a family network would not be missed if she 'disappeared'.

145.

The motives of the trafficker are also relevant to the issue of risk. We recognise that this will be difficult to assess as we do not have direct evidence from those involved in trafficking; however, it will be necessary to consider the accepted facts. A trafficker who has worked alone is less likely to expend resources in tracking down an escapee than one who works with others and has greater resources. Where more individuals are involved in the process there will have been greater costs involved and more people who will want a pay back. It may be that the longer a woman has worked for a trafficker, the less risk there is that he would pursue her if she escaped as she may already have earned him a satisfactory amount. The situation may be different where a woman has escaped after just some months as the investment may not have been paid off and the trafficker will want to make good his

losses. The situation of the woman on return will also be relevant. Clearly if she is in employment and has family support, including male relatives to protect her, it is less likely that a trafficker will succeed in enticing her.

146.

We now consider the situation for the appellant. We have heard compelling evidence, which we fully accept, that the appellant is a particularly vulnerable young woman. In that sense she is not in the same position as other women being returned to Thailand. We accept that it would be very difficult for her to reintegrate into Thai society and support herself without falling back into the hands of traffickers because her fragility would inevitably attract the wrong kind of attention. We are also cognisant of the fact that she has no family support, no home and limited education.

147.

Ms Skrivankova gave evidence that young, single women returning to Thailand after a long absence in Europe are assumed to be prostitutes and are therefore ostracised by their communities. We find it difficult to accept that all such women would be treated in this way however we are prepared to accept that some women may indeed be viewed as such by society. This is something which will be case specific and will depend on an applicant's personal profile and the condition in which she returns.

148.

We find that for the appellant it would be difficult to reintegrate into her home community because of the fact that she would be unable to adequately explain her long absence and her return without funds and with a clearly fragile state of mind. We note Ms Kralj's evidence that the appellant has a low threshold to re-traumatising triggers and that anything from the past could act as a trigger. We were able to observe at first hand the manner in which she fell apart when questions about M were put to her.

149.

If she felt unable to return to her home area, the appellant's alternative would be to seek work elsewhere; however, the evidence is that jobs are hard to come by, particularly for somebody who has been away from the job market for a number of years and who has no qualifications and no references. It is likely that the appellant would be forced by economic necessity to seek out work in the tourist industry which would appear to be the only area where employment is possible. The problem is, as the evidence shows, that the tourist industry includes a rampant sex trade where traffickers operate. We also bear in mind that during the time she has been in the UK, the appellant has not obtained any qualification or learnt any skills that would assist her in finding employment. Although it was not suggested that societal discrimination in itself amounts to persecution, and we do not find that it does, it is a factor which is relevant for the purposes of assessing risk as it contributes to the isolated position a woman would find herself in which, in turn, increases her vulnerability and her attraction to traffickers. We do not say that the likelihood that the appellant would be unable to find work which would be unlikely to expose her to a risk of trafficking, amounts to persecution, but it is a factor that when viewed cumulatively with the other facts of her situation places her at additional risk.

150.

It could be said that having been trafficked once, she would be wiser the next time round. However, the evidence indicates the opposite is the case and that former victims of trafficking are even more vulnerable to re-trafficking because they have already been through the business and know how to be

compliant. They are easier for traffickers to deal with as they do not have to be taught the rules from scratch; the 'breaking in' period has already taken place.

151.

The risk to the appellant then is that without any prospect of employment other than in the tourist industry, she would find herself in a situation where she could be re-trafficked. She may also be sought out by the traffickers who brought her to the UK and who might want to recoup their investment in her. She has been told that she had a debt to pay and her escape before that had been done would be likely to have aggrieved the traffickers. We have already given reasons why we conclude that M worked as part of a gang with official connections. We do not know if any attempts have been made by him to locate her in this country; he may well have tried and been unable to find her, but it would certainly be an easier task for him if she returned to Thailand. We note that in the UK she has been residing in safe accommodation and has had no contact with other Thai citizens and that this is likely to remain the case. We note the evidence before us that accessing information on returnees is a simple matter and we are mindful of the various reports, cited above, which indicate the complicity of immigration officials with criminals and traffickers.

152.

Ms Akbar submitted that there was no evidence that the appellant's relatives in Thailand had been approached by M or any member of a gang since the appellant's escape. This question has never been put to the appellant. Whilst it is safe to assume that she would have disclosed this information at some point had such an event taken place, we note that there is nothing to indicate that the identity of her aunt and cousins, or indeed their whereabouts, are known to the traffickers. This was not a matter pursued at the appellant's interview or raised in cross-examination at the hearing though we accept that the respondent cut short her questioning of the appellant when it became clear that the appellant was unable to cope with the examination.

153.

Paragraph 339K of the Immigration Rules provides:

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 persons 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.

154.

The leading UK case on past persecution is Demirkaya v SSHD [1999] ImmAR 498 and closely reflects the principle set out in the above paragraph. The court held that the treatment a person had been subjected to before leaving his country of origin was very relevant to the question of whether that person had a well founded fear of persecution on his return. The court held that in the absence of a significant change in the country of origin, there may be a real risk of persecutory treatment on return. There is nothing in the evidence before us which would suggest that the situation in Thailand has changed since the time of the appellant's departure. On the accepted facts, the appellant has already been trafficked from Thailand which demonstrates a failure by the state to protect her from being trafficked. For the reasons given by the appellant, and taking into account the evidence of the country experts, we find that either her traffickers would be reasonably likely to learn of her return and would be motivated to seek her out or that she would be at risk of being re-trafficked because of her lack of support, lack of economic opportunity, the stigma attached to her as a prostitute and her vulnerable state of mind.

Humanitarian Protection

155.

Under paragraph 339C an applicant is entitled to Humanitarian Protection if he can show that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
- (ii) he does not qualify as a refugee as defined in regulation 2 of The Refugee or Persons in Need of International Protection (Qualification) Regulations 2006;
- (iii) substantial grounds have been shown for believing that the person concerned, if he returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and
- (iv) he is not excluded from a grant of humanitarian protection.

Serious harm consists of:

- (i) the death penalty or execution;
- (ii) unlawful killing;
- (iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
- (iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

156.

Although we have found for the reasons set out above that the appellant is a member of a particular social group, and that therefore the Refugee Convention is engaged, in the event that we are mistaken in our analysis under the Convention, we consider that given our finding that the appellant has shown that she would be at substantial risk of serious harm (i.e. inhuman or degrading treatment or punishment) on return to Thailand, she is entitled to Humanitarian Protection if she cannot qualify for refugee status.

157.

Either grant is of course dependent on the appellant's ability to show that she would be unable to access a sufficiency of protection and that internal relocation would not be a viable option.

Sufficiency of protection

158.

We find that the risk to the appellant emanates from agents of persecution; i.e. traffickers or criminal enterprises and we find that despite the attempts of the Thai government to combat the business of trafficking, as discussed above, the authorities are unable to offer effective protection to women such as the appellant. We note the widespread nature and extent of trafficking in and from Thailand which is said to have steadily increased; indeed, the evidence before us is that "in recent years, the number of annual convictions for sex trafficking has declined" (US report on TIP). This is despite the anti-trafficking legislation implemented in June 2008. The evidence shows that only three traffickers have been convicted over the past years and that during the year covered by the report, no convictions were achieved.

159.

Whether the authorities in an applicant's country of origin are able to protect victims or potential victims of trafficking will depend on whether legislative and administrative mechanisms have been put in place to prevent and combat trafficking, as well as to protect and assist the victims and on whether these mechanisms are effectively implemented in practice. In Bagdanavicius and Anor v Secretary of State for the Home Department [2003] EWCA Civ 1605, the Court of Appeal held that sufficiency of state protection, whether from state agents or non state actors, meant a willingness and ability on the part of the receiving state to provide through its legal system a reasonable level of protection from ill treatment of which the applicant for asylum had a well founded fear. The effectiveness of the system provided was to be judged by its ability to deter and/or to prevent the form of persecution of which there was a risk, not just punishment of it after the event. We note that the UNHCR's guidelines advise that where reasonable steps to prevent trafficking and to provide effective protection and assistance to victims have not been taken, the fear of persecution of the individual is likely to be well-founded. We are aware that the Thai government has enacted legislation to attempt to tackle the problem of trafficking which, as the country material indicates, is widespread and a serious problem all over Thailand. We accept that inefficiency and incompetence is not the same as unwillingness (Horvath [2001] AC 489). The country evidence before us, however, indicates the problem is more than inefficiency or incompetence. It is reported that corruption is rife and that the involvement of officials, whether at the border, at immigration counters at airports or in other government departments, with traffickers and criminals has weakened the impact of the steps taken by the government to combat human trafficking.

160.

We note that women were trafficked to various countries around the world which gives weight to Ms Skrivankova's evidence that the country of destination can easily be changed for women who are being re-trafficked, if considered necessary. We note that the evidence indicates that high-level officials did not participate in taking bribes from traffickers or criminals and that it was the low or mid-level police officers who facilitated the most severe forms of trafficking and for that reason we do not find that the risk of persecution can be said to emanate from the state. However, officials found to be complicit in any part of the illegal economy were rarely prosecuted and we find that this strengthens our finding that a sufficiency of protection would not be available to the appellant.

161.

We take account of the fact that there are shelters which, it could be argued, operate to provide some form of protection to trafficked women however the evidence before us, which we have referred to earlier, is that such shelters are manned by men and not women, that they provide a detention like environment, that they offer no assistance with education or skills training and that they provide only temporary, short term accommodation. We also note that counselling services are limited and funds to assist trafficked women are scarce. It is important to note that a great deal of personal information is required before any help can be accessed and that given the perception of corruption, and of the appellant's belief that her trafficker had links with the authorities, she would be reluctant to provide such information for fear of reprisals. Finally, there is also the fact that the appellant has been found to be a woman who would be extremely unlikely to seek such help given her personal circumstances and the ongoing trauma she suffers.

Internal relocation

162.

The correct approach to the issue of internal relocation was laid out by Lord Bingham in Januzi [2006] UKHL 5 and confirmed in AH (Sudan) [2007] UKHL 49. It is whether a claimant can reasonably be

expected to relocate or whether it would be unduly harsh to expect him to do so. It is important to bear in mind that the test for relocation must not be equated with a well founded fear of persecution or a real risk of ill treatment. This is reflected in paragraph 339O of the Immigration Rules HC 395, as amended. The assessment must be directed to the situation of the particular appellant, whose age, gender, experience, health, skills and family ties may all be relevant. Thus the circumstances of each applicant must be carefully assessed. For some, relocation may well be a possibility.

163.

We have above set out in some detail why we have found the appellant to be particularly vulnerable. We have also explained why we found that she would be unlikely to obtain employment that would keep her safe from a risk of being re-trafficked. We heard evidence that sex traffickers operate throughout Thailand and that poorer areas are particularly targeted. Single, young women can be at risk in any part of the country if they live without family support and are not strong enough to withstand the risk of being duped into the sex trade. Their socio-economic conditions have a direct bearing on the extent of risk they are likely to face.

164.

We take note of the fact that there are some shelters for victims of trafficking in Thailand. We have addressed this issue in paragraph 159. The evidence from Ms Pollock and Ms Skrivankova is that (unlike the evidence on shelters in Nigeria in *PQ*), these focus mainly on providing short-term assistance to those who have been trafficked into the country. Moreover, they are described as resembling detention centres with women unable to come and go freely. That would have a negative impact on the appellant who has already struggled with restrictions on her movements when she was living at the Medaille Trust as this was reminiscent of her period of trafficking. The evidence has also been that the appellant would find it difficult to access assistance because of her fragile state of mind. Even if the appellant felt able to approach the authorities for help, the US State Department report, as cited earlier, observed that funds for fighting trafficking or aiding its victims were limited as was the availability of psychological counselling.

165.

We have heard evidence that if the appellant is removed from her therapy, she would essentially fall apart. We had the opportunity to observe the appellant give oral evidence in court and we noted her extreme distress and her inability to physically move or compose herself upon completion of her examination. In our judgment, such a reaction could not have been feigned and indeed the lengthy medical reports that are before us confirm that the appellant has reacted in that way throughout her weekly therapy at the Helen Bamber Foundation although there are now some fragile signs of improvement. The evidence before us is that counselling in Thailand is extremely limited and we accept that the appellant is not somebody who would be able to approach the relevant bodies for assistance. Her limited education, her timidity and her perception that officials have connections with trafficking gangs would all serve to increase her reluctance to do so. We note that she was not even able to seek help in this country and only came to the attention of the Foundation following a hospital referral after a suicide attempt. Her feelings of unworthiness and her description of herself as defiled and dirty would only put further obstacles in the way of accessing assistance. In the light of all these factors we find that it would be unreasonable to expect the appellant to relocate and we also find that due to her personal circumstances she would be vulnerable wherever she went.

166.

Ms Brewer did not seek to argue that the appellant's human rights were engaged because she was a suicide risk and we have not therefore considered it necessary to address this point. Whether or not

she is a suicide risk, it is clear that her psychological condition is fragile and that is relevant to how she would cope on return and also to how she would be perceived by others, particularly traffickers who might find her to be an easy target. We have considered her state of mind in that context.

UK's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings

167.

On 17 December 2008 the UK ratified the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197). The Convention is based on recognition of the principle that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and integrity of the human being. It is a comprehensive treaty which aims to prevent trafficking, protect the human rights of victims of trafficking and prosecute the traffickers. It applies to all forms of trafficking; whether national or transnational, whether or not related to organised crime whoever the victim and whatever the form of exploitation. Ratification required the UK to have a national referral mechanism (a definitive process for identifying victims) in place for 1 April 2009. Other key benefits included a process by which victims would be offered support, including a 45 day reflection and recovery period, and the possibility of a one-year renewable residence permit, and would be assisted in giving information to police so that the authorities could bring those who exploit them to justice. Victims were to be offered medical treatment, counselling and information as well as appropriate accommodation. There are also provisions for receiving compensation. The Convention provides the possibility of not imposing penalties on victims for their involvement in unlawful activities, if they were compelled to do so by their situation.

168.

The Secretary of State accepted the appellant's claim to have been trafficked into the UK for sexual exploitation. That is plain from the refusal letter and was confirmed by Ms Akbar at the hearing. As required under the Convention the UK had an obligation to offer immediate support and to investigate her claim with a view to prosecuting those responsible. This duty is emphasised by the European Court of Human Rights in the recent case of *Rantsev v Cyprus and Russia* (Application no. 25965/04) – judgment delivered on 7 January 2010) where a Russian national travelled to Cyprus, worked as a prostitute in a discotheque and died whilst attempting to escape the flat she was held in after notifying her employer that she wanted to return to Russia. Legal proceedings were initiated by her father.

169.

Ms Brewer criticised the Secretary of State for failing to carry out the duties incumbent on him, i.e. to undertake enquiries or investigations following the receipt of the information provided to him by the appellant via the UKHTC. We are mindful of the fact that this is a relatively recent Convention and there may not yet have been time to implement its provisions or to properly train all appropriate Home Office officials but it appears that the Secretary of State could have done more to investigate the appellant's very serious complaint particularly as it was noted by the interviewing officer that substantial detail had been provided.

170.

Although there is a non-punishment provision included in the Convention, the appellant was prosecuted for using a false passport and sentenced to nine months in prison. We accept, however, that this was not a breach of the Convention by the respondent as he was not aware at the time of the prosecution that the appellant was a victim of trafficking as she did not disclose this fact until after

her sentence was completed. However we do find it surprising that the appellant's failure to disclose her history 'earlier' was held against her, particularly as the respondent's own guidelines advise caseworkers that the failure of a trafficking victim to disclose information should not count against her as it can be explained by many reasons.

171.

When the appellant shared her experiences with the authorities, she was referred to the UKHTC on 21 February 2007, presumably to assist in identifying whether she was indeed a victim. Despite the UKHTC referral her to the Poppy Project, a Home Office sponsored organisation, she was served with papers as an illegal entrant and two attempts were made to remove her from the UK before she had been assessed by the Poppy Project and whilst the identification process was ongoing. Moreover, in refusing her application for asylum and Discretionary Leave, the respondent has held against the appellant the fact that she did not disclose her account earlier and no action appears to have been taken as a result of the information she provided to the UKHTC. We can see no consideration having been given to the issue of a renewable residence permit to the appellant as permitted under the Convention.

172.

The appellant also relied upon Articles 4 and 8 but given our findings it has not been necessary to consider those aspects of the claim. Although no submissions were made on Humanitarian Protection grounds, we have found that if we are wrong with respect to our analysis on particular social groups, the appellant would be entitled to protection on the basis that she has established a real risk of serious harm in Thailand.

Decision

173.

The original Tribunal was found to have made a material error of law. The following decision is substituted.

174.

The appeal is allowed on asylum grounds.

175.

The appeal is allowed on Article 3 grounds.

Senior Immigration Judge Kekić

Judge of the Upper Tribunal

LIST OF BACKGROUND MATERIAL BEFORE THE TRIBUNAL

2005 International Migration in Thailand by IOM Bangkok

2006 US Department of State, Country Report on Human Rights Practices

1 January 2006 Women's Commission for Refugee Women and Children (USA), Abuse Without End: Burmese Refugee Women and Children at Risk of Trafficking

20 January 2006 UN Committee Monitoring Compliance with Women's Anti-discrimination Convention Takes Up Periodic Report of Thailand

3 February 2006 UN Concluding Comments of the Committee on the Elimination of Discrimination Against Women - Thailand.

17 March 2006 Office of the UNHCR Concluding Observations of the Committee on the Rights of the Child

7 April 2006 UNHCR Guidelines on International Protection

7 July 2006 The Nation, Judges and Academics Discuss Trafficking in Thailand "Anti-Trafficking Seminar"

October 2006 API Gender Issues in Asylum Claims

2007 US Department of State, Country Report on Human Rights Practices

26 January 2007 Inquirer.net 1.36m Trafficked Person from Asia

31 May 2007 BBC Country Profile Thailand and map

12 June 2007 US Department of State, Trafficking in Persons Report

26 June 2007 Freedom House, Freedom in the World 2007

28 September 2007 Thai News Service: Report Says Victims of Human Trafficking Receive Little Help.

1 October 2007 Human Trafficking.org

1 October 2007 IOM South East Asia

2 October 2007 The Nation (Thailand) New Law on Trafficking

10 October 2007 Report by Daphne Kapetanaki, Senior Support Worker for the Poppy Project

29 October 2007 Helen Bamber Foundation - Lucy Kralj letter

3 December 2007 Thai News Service: National Legislative Assembly Passes Anti-Human Trafficking Act

31 December 2007 Helen Bamber Foundation - report by Lucy Kralj

2008 US Department of State, Trafficking in Persons Report

2008 US Department of State, Country Report on Human Rights Practices

2 January 2008 Bangkok Post Opinion Editorial: An Ugly Trade in Human Misery.

18 January 2008 Anti-Slavery International - report by Klara Skrivankova

22 January 2008 Helen Bamber Foundation - Lucy Kralj letter

22 May 2008 Helen Bamber Foundation - Lucy Kralj

9 August 2008 Helen Bamber Foundation - Lucy Kralj letter

15 August 2008 Anti-Slavery International - Klara Skrivankova

1 December 2008 Country Expert Report in Relation to Return of Trafficking Victims to Thailand - Jackie Pollock

2009 US Trafficking in Persons Report

20 March 2009 Helen Bamber Foundation - Lucy Kralj letter

29 April 2009 IAS Research and Information Unit Country of Origin Information Report