



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

Nguyen (Anti-Trafficking Convention: respondent's duties) [2015] UKUT 00170 (IAC)

THE IMMIGRATION ACTS

Heard at Field House

Determination Promulgated

On 19 September 2013 & 15 December 2014

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Before

UPPER TRIBUNAL JUDGE ALLEN (On both dates)

UPPER TRIBUNAL JUDGE COKER (On 15 December 2014)

Between

NHAN THI NGUYEN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Mr V P Lingajothy of Linga & Co

For the Respondent: Mr G Saunders, Senior Home Office Presenting Officer

(on 19 September 2013)

Mr P Duffy, Senior Home Office Presenting Officer

(on 15 December 2014)

The duties of a signatory to the Council of Europe Convention on Action against Trafficking in Human Beings include responsibility towards a victim of historical trafficking into the country from which they later travel (untrafficked) to the signatory state .

DETERMINATION AND REASONS

1. This appeal comes before the Tribunal as a consequence of a remittal by the Court of Appeal subsequent to a previous hearing before the Upper Tribunal. In a statement of reasons the parties' agreement as to the terms of the remittal are set out. These were:

"To consider the issue of whether it was safe and reasonable for the appellant and her children to relocate within Vietnam, given her changed circumstances", and

“In accordance with the requirement under section 55 of the 2009 Act to treat the children’s interests as a primary consideration, to undertake a more comprehensive examination of what the children’s circumstances would be if they returned to Vietnam with their mother”.

2. The appellant is a national of Vietnam. Her evidence before the First-tier Judge was that her parents had died and she subsequently lived with her grandparents. She then went to work in Hanoi and her employer there suggested she could travel abroad where she could make more money, and he arranged for her to go to Hungary. In Hungary she was taken, locked up and raped and thereafter forced to engage in sexual activities for the payment of money. During this time she became close to a security guard and saved enough money and with his help managed to escape with a friend of his who provided her with a false passport in order to travel to the United Kingdom.

3. She arrived in the United Kingdom in October 2009, with a false passport and was dropped off at the Leeds Railway Station. She had a relationship with a man who was kind to her and this lasted until March 2010. She discovered that she had become pregnant and he kicked her out of the house. She went to stay with a lady who took pity on her and during this time she was visited by a friend of the person she was staying with and she began relying on him more and more and had a relationship with him. He had been put down as the father of her child. Subsequently she met another person through a friend and became pregnant by him, had another child and as a result of this incident he left her. She did not want to return to Vietnam as the gang who had arranged for her travel would be after her for money and she would not feel safe there and she sought asylum in the United Kingdom.

4. The judge accepted that she had been taken to Hungary and through her employer had been abused there. He did not accept that she would be at serious risk of being persecuted upon return to Vietnam and also dismissed the appeal under Article 8 of the Human Rights Convention.

5. The claim before the Upper Tribunal on 19 September 2013 proceeded by way of submissions only. Mr Lingajothy argued that the appellant had been trafficked for sexual exploitation. She went initially to Hungary and then to the United Kingdom. Her children had both been born in the United Kingdom and their fathers were unknown so that paternity was in question. Mr Lingajothy referred to what was set out in his skeleton argument about Article 4 of the Human Rights Convention and the Anti-Trafficking Convention of 2005. The facts of this case fell within the United Kingdom’s obligations to the appellant.

6. Mr Lingajothy argued that a number of the facts of the case were similar to those in Rantsev (Application No. 25965/04) 7 January 2010, where there had been held to be a failure to protect a trafficked woman in Cyprus. The evidence indicated that none of the anti-slavery provisions or human rights safeguards in the United Kingdom had been ratified by Vietnam. Mr Lingajothy relied on what was said in the Country of Origin Information Report (COIR) of April 2012 and the bundles previously put in. As regards the COIR he relied particularly on paragraphs 22.35 and 22.37. There was an Article 4 obligation in respect of a risk of re-trafficking if she returned to Vietnam. The traffickers had expected to gain from her. She might be a vulnerable person on return with two children. The nature of the obligation under Article 4 was protection. The state of transit, the state of origin and the state of destination were all states with a duty to protect.

7. As regards the children again reference was made to section 55 of the Borders, Citizenship and Immigration Act 2009 as set out in the skeleton. It was a question of the best interests of the children. The Tribunal was referred to the appellant’s statutory declaration. She had been to the Vietnamese Embassy. She had gone to obtain ID and even that was denied and it was an open and shut case. That was only one element of the matter however. It would be argued on behalf of the Secretary of State

that nationality could come from either parent, but the appellant had been told something other than that. A number of embassies did not treat their nationals favourably when abroad, especially when asylum had been sought, so not much weight should be attached to that. It was a question of whether they would be given passports. The appellant and the children could not be returned to an uncertain future. There was every indication of a lack of protection on return. She had been found to be credible and to have been trafficked. There were legal and moral obligations and someone's life, particularly with children, could not be second-guessed.

8. In his submissions Mr Saunders argued that, although the appellant had been trafficked from Vietnam to Hungary, she had not been trafficked to the United Kingdom for sexual or other exploitation. She had been helped to come to the United Kingdom to rescue her from that fate. After her arrival here she had not been involved in any kind of exploitation. She had had two relationships and had given birth to two children. Article 4 applied to trafficking. The case in EK [2013] UKUT 00313 (IAC) had been put on the basis first that the appellant there had been trafficked into the United Kingdom and within the United Kingdom and also that by virtue of the Anti-Trafficking Convention the United Kingdom assumed protective and remedial obligations extending to medical assistance and recovery. In that case the Entry Clearance Officer had neglected to give EK, a domestic worker, a leaflet telling her her rights and this had triggered the United Kingdom's obligation.

9. If one assumed that the duty had been triggered, the United Kingdom could not advise as the appellant had come to the United Kingdom illegally and had not identified herself to the authorities for some time. She had seen a psychiatrist in September 2011. He had assessed her as suffering from depression but that her condition fell short of a diagnosis of post traumatic stress disorder. It was not clear therefore what help she needed that the United Kingdom was obliged to offer her. Nor was it clear whether she had taken up any of the recommendations made by Dr Gupta. He had recommended that the report go to her GP. It was unclear how the United Kingdom could take things further and the evidence was lacking to show a failure to do so. There was no indication of any other obligations. In *Rantsev* the Cypriot police had failed to handle the case properly and investigate properly and hence the case. There was no shortcoming in the Home Office's conduct in this case in respect of the appellant's trafficking to an intermediary country. There was nothing in her evidence to show trafficking or sexual abuse here.

10. On the citizenship point, the appellant had gone to the Vietnamese Embassy. It was not known what the nature of her approach to them was and what information she had given. It was in her interests to say they would not document her. Mr Saunders referred to the document that he had put in setting out the law on Vietnamese nationality. It was clear from Article 16 that nationality could be derived from either parent. It was clear that the Vietnamese authorities were willing to look at evidence. The appellant should be able to get a copy of her Vietnamese birth certificate. There was no question of her birth or ancestry being in doubt. The Tribunal should not accept that establishing nationality would be closed to her or her children.

11. As regards the situation to which they would return in Vietnam, the Tribunal was referred to the refusal letter, particularly at paragraphs 26 and 28 and the matters set out there concerning internal relocation. Vietnam was a large, populous country. Measures had been taken to do something about trafficking. Clearly it occurred, but the evidence showed that there were systems in place. The appellant was not wanted by the authorities so returning on documents would not necessarily be known to the traffickers. She was a young woman and healthy as far as was known. The only medical evidence was two years old. It did not show she could not work. It was a mere possibility, and no more, of her coming to the traffickers' attention.

12. In respect of the Article 8 issues, her own stay here had been relatively short. She had failed to identify anything beyond the duration of her stay to render her private life deserving of protection. The children had been born respectively in December 2010 and November 2011. They were therefore not in a position to have their own opinions as to what was best for them. The Tribunal was asked to assume it was in their best interests to stay in the United Kingdom but that was premised on the assertion of a lack of safety for them and their mother in Vietnam. There was no freestanding section 55 claim in the sense that there was no evidence to support it. The children were very young. It could be assumed they were happy at nursery but that was all. Their best interests were to remain with their mother. It would not be unsafe for her to return to Vietnam. There were no obligations on the United Kingdom arising from her having been trafficked some years ago to Hungary. The appeal should be dismissed.

13. By way of reply in the respect of the EK issue Mr Lingajothy referred to paragraph 3 at page 2 of his skeleton. The appellant was leading a near-normal life in the United Kingdom and had been receiving treatment but that would not be so if she was removed. Rantsev set out the ambit of protection and the United Kingdom fell within that. The Tribunal was invited to look at her witness statement in regard to the matter of contention that she had not been sexually exploited in the United Kingdom. She had two children by two different fathers and did not know them. It should be considered what that told us. She might not be volunteering information about certain matters.

14. With regard to Article 8 there was family life with the children and also the issue of physical and moral integrity in respect of her private life. This had a lot of force. The Tribunal was referred to what was said at page 13 of the psychiatrist's report. There was enough in that report as to the consequences and the effects of her having been trafficked and the impact on her future rehabilitation in Vietnam. With regard to protection and what was said in the refusal letter, Mr Lingajothy pointed to paragraph 22.35 of the COIR again. He noted from the previous paragraph that domestic violence was not criminalised in Vietnam. There was the case law on medical treatment. Protection was required to be sufficient. It was argued that in Vietnam there was no sufficiency of protection for the appellant as a trafficked woman. She came within a social group. There was reference in the skeleton to the case of AZ with respect to Thai women. There had been a lack of the necessary protection and it would breach the state's obligations to return her. As regards the children and the documents, she was within a social group and seeking international protection and although she did not wish the protection of Vietnam the UK was requiring her to do so. That impacted on our obligations. The appeal should be allowed.

15. The determination was reserved.

16. Subsequent to the hearing, it became clear that there had been no submissions on the question of whether the United Kingdom owes any obligation under the Anti-Trafficking Convention to a person such as the appellant who, though she was a victim of previous trafficking (from Vietnam to Hungary), had not been trafficked into the United Kingdom, whence she came from Hungary. The hearing was therefore reconvened to hear argument on the point, with final submissions being made on 15 December 2014 when Judge Allen was joined by Judge Coker, subsequent to a number of adjournments following brief hearings on 13 November 2013 and 29 April 2014. There was no objection to the addition of Judge Coker to the panel.

17. A new issue was raised in an addendum to the appellant's witness statements, dated 12 November 2013. With reference to the man with whom she initially stayed in the United Kingdom she said that he had kept trying to force her to have sex with him, left her once without food and money for two

days and, after his return raped her, leading to her pregnancy, and eviction by him when he learned of her condition. Thereafter the appellant was accepted into the National Referral Mechanism, was given the 45 days rest period as prescribed by the Anti-Trafficking Convention and was interviewed in September 2014. In that interview she said that a security guard, Nguyen, helped her to leave Hungary by introducing her to Mr Tuan, with whom she stayed, living normally, for about twenty days. Mr Tuan gave her a passport and told her to follow a white man, who gave her an air ticket and she went with him to the United Kingdom. He left her at a railway station. She had been given the number of a Mr Long, and she called him and he took her to Birmingham. He threatened her and eventually she submitted to having sex with him. After that he treated her very well, and she thought he was not a bad man, although he had kept her locked in his flat, threatened her and raped her. When he learned that she had become pregnant he wanted her to have an abortion. She refused, and he pushed her over. About a month later she left the flat, as he wanted her to leave, and she stayed initially with a Ms Thuy whom she met at a station, and thereafter with friends of Ms Thuy's. She left them shortly before her baby was born and went to live with Mr Cuu. He is her current partner (though they do not live together) and the father of her other two children.

18. At the hearing on 15 December 2014 Mr Duffy referred us to a decision that had been made on 11 December 2014 in which it was accepted by the Competent Authority that the appellant had been trafficked from Vietnam to Hungary, but, on account of discrepancies in what she said, did not accept that she had been trafficked into the United Kingdom from Hungary.

19. With regard to the specific matter in respect of which the appeal had been re-opened, Mr Duffy referred to the respondent's guidance entitled "Victims of Human Trafficking - Competent Authority Guidance", which is valid from 24 October 2013. Two particular paragraphs were relevant, set out at page 60 of the guidance. There it was said that a person who claimed to have been trafficked or exploited overseas who subsequently travelled to the UK of their own accord independent of their alleged trafficker was unlikely to be considered a victim of trafficking for the purposes of the Anti-Trafficking Convention, but since it was possible that such a person who had fled to the United Kingdom to escape a trafficking situation would still be traumatised by their experience, and unless the case met Dublin II arrangements and another European Union Member State was taking responsibility for the case, the Competent Authority was required to offer the victim help and protection in the United Kingdom under the Anti-Trafficking Convention.

20. The issue of risk on return had been dealt with at the previous hearing. The respondent did not dispute that the appellant had been trafficked into Hungary, but there was a dispute as to whether she had been trafficked into the United Kingdom due to discrepancies in her evidence. It was accepted that the respondent's trafficking obligations were engaged as there was no Dublin II point, and she engaged with the NRM. She had had enough time for the period of reflection. On her account she had been trafficked into the United Kingdom several years ago and there is no indication of ongoing treatment being required. Further, it was accepted that she had been trafficked into Hungary. No further period of leave was needed.

21. In his submissions Mr Lingajothy referred to the appellant's addendum to her witness statement in which she said she had been trafficked into the United Kingdom as well as having been trafficked into Hungary. The Tribunal was asked to look at the comprehensive interview records. She had been trafficked into Hungary and into the United Kingdom. The case fell within Article 10 of the Anti-Trafficking Convention.

22. Mr Duffy said that the respondent did not accept the account of having been trafficked into the United Kingdom bearing in mind the questions and answers at interview. She had changed her evidence. This might not matter, as it was accepted she had been trafficked into Hungary and was dealt with under the NRM. There was nothing to be gained by quibbling on this point. The trafficking from Vietnam to Hungary was indicative of gang involvement whereas, on her later account, the trafficking from Hungary to the United Kingdom was the action of individuals and was not on the basis of prostitution or false labour. The trafficking relevant to risk on return was from Vietnam to Hungary and not Hungary to the United Kingdom.

23. Mr Lingajothy argued that Article 12 of the Anti-Trafficking Convention was engaged and the Secretary of State could not avoid her responsibilities. There were legal and moral obligations on the respondent if the appellant was trafficked from Hungary to the United Kingdom but not to the same extent if she had only been trafficked from Vietnam to Hungary. The decision of the Upper Tribunal in *EK* was applicable bar one point in that there the person had come to the United Kingdom voluntarily, but otherwise they were comparable situations.

24. The appellant had the right to be protected in the United Kingdom because she had been trafficked here and this gave rise to responsibilities under Article 4 of the Human Rights Convention as had been argued previously. She had been brought to the United Kingdom and later exploited. The Tribunal was referred to the psychiatric report about the ongoing counselling help. The responsibilities of the Secretary of State under the Anti-Trafficking Convention and under Articles 3 and 8 of the Human Rights Convention were engaged. There was an asylum argument also because of her circumstances in the United Kingdom.

25. With regard to Article 3, a fear of return to Vietnam existed where the gangs operated and could target her. She now had three children, all of whom had been born in the United Kingdom, and that was a further factor on return. The children were not entitled to Vietnamese nationality. They had gone to the Vietnamese Embassy and were told they did not qualify straight away: also it was a matter of risk as she was a victim of trafficking and had three children by different fathers and she would be ostracised and they could be seen as a social group. The best interests of the children required to be considered. She had given good reasons for not going to the police. The respondent was not relying on Dublin II. This was a very strong case and the appellant was a victim of trafficking.

26. Mr Duffy by way of response argued that it was accepted that the Anti-Trafficking Convention was engaged. There were two trafficking decisions, the first in 2011 and now the 2014 decision. The change in evidence was of relevance. There was though no dispute that she had been trafficked and the question is what was the decision under appeal, and it was to remove an illegal entrant and asylum being an issue. It was a question of risk on return and that had been dealt with. It might be argued that the decision was not in accordance with the law if it had not been dealt with. It was unclear whether the trafficking decision was appealable to the Upper Tribunal and it could be a matter of judicial review. Articles 12 and 14 of the Convention had been applied. Under the latter she would obtain a residence permit if successful on referral to the NRM but the criteria under the Article were with reference to her personal situation or co-operation in criminal proceedings. There had not been shown to be an ongoing need for treatment and she was not helping the police with their enquiries.

27. The Competent Authority had said no with regard to the residence permit requirement. The Convention left it up to them whether it was necessary. That could be looked at in the context of Article 3 or Article 8. The Competent Authority had not received up-to-date medical evidence and that

was one reason for this decision. It was not known what ongoing treatment the appellant was receiving and whether or not it would be available in Vietnam. Mr Duffy relied on the decision of the Competent Authority on that and the conclusion that there was no need for a residence permit for either reason.

28. Risk on return had been dealt with at the previous hearing. For the sake of completeness Mr Duffy had put in the most recent US State Department Report and the most recent Operational Guidance Note. It should be noted that the father of two of the children was Vietnamese with no status in the United Kingdom and that muddied the issue as to whether the appellant would return as a lone mother. There were no removal directions for him but he was her partner and as father of two of the children he could help.

29. With regard to the children the point was taken about the authorities and their response but two of the children had a Vietnamese father and a Vietnamese mother so it would be odd if they would be rendered stateless on the basis of being born outside Vietnam. In fact Mr Duffy was of the view that the fathers of all three children were Vietnamese. It was not likely to be a long-term problem. The appellant would not be removed without the children. Questions of nationality were to be resolved on the basis of the balance of probabilities.

30. As regards the question whether the threshold was the same for Article 3 for the appellant bearing in mind any risk of ill-treatment because of the trafficking, it needed to be taken into account. It was part of the assessment of risk on return. There were factors that made her more vulnerable and if she was at risk from the traffickers then she would succeed. There was no similar case from other authorities about return for a person who had been trafficked. The matter had to be assessed in light of her vulnerability.

31. As regards any ongoing need for medical treatment and whether that gave rise to Article 3 or Article 8 issues as it arose from trafficking, it was a factor in her favour and was true of anyone who was vulnerable and greater weight on her side of the scales would be accorded to it.

32. By way of reply Mr Lingajothy argued that although there were no cases of trafficking to Vietnam it was relevant to take into account cases from China and Thailand as relevant in regard to south-east Asia in respect of the question of risk. On the issue of the children's nationality, the first child did not have the same father as the other two and it seemed according to the appellant that that child had British nationality and the issue of paternity had been explored earlier. This created more questions than answers. That child could have the right of abode in the United Kingdom. The Vietnamese had said they did not confer nationality on children born outside Vietnam if the father was not Vietnamese. Nationality was acquired via the father.

33. With regard to the argument that there was no ongoing responsibility, there were issues under Article 12 concerning education and medical treatment etc. but there was more. There was a question of her treatment and rehabilitation which was ongoing and reference was made to the counsellor's letter that had been put in. There had been a psychiatric report provided to the First-tier judge where there was reference to the appellant demonstrating suicidal ideation. She was a vulnerable person. There were obligations under the Convention and moral obligations to protect someone in her position.

34. We reserved our determination.

35. We consider first the trafficking issue.

36. We have set out in an Appendix the relevant provisions applicable in this case. They are Article 4 of the European Convention on Human Rights and particular provisions of the Council of Europe Convention on Action against Trafficking in Human Beings (CAT).

37. In Rantsev the Court of Human Rights concluded that trafficking within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4. The Court said that Article 4 imposed a positive obligation on Member States to put in place an appropriate legislative and administrative framework to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. In Rantsev a violation of Article 4 was held to have occurred in that there were significant weaknesses in the general legal and administrative framework and in Cypriot immigration policy, which had the result that the regime in Cyprus did not afford practical and effective protection against trafficking and exploitation

38. As part of the United Kingdom implementation of the Anti-Trafficking Convention, a national referral mechanism (NRM) was established in April 2009. This consists of first a “multi-agency Competent Authority” which is a central point of contact for bodies such as the police and local authorities who may encounter victims of trafficking. The second element comprises linked but separate Competent Authorities to deal with situations where trafficking is raised as part of an asylum claim or in the context of other immigration processes. There is reference at page 5 of the Home Office guidance to which we have referred above to the particular Competent Authorities, one being the UK Human Trafficking Centre (UKHTC) which deals with all cases involving a UK or EEA national and acts as the first point of contact for referrals, and the Home Office Competent Authority which is concerned with situations where trafficking is raised as part of an asylum claim or in the context of another immigration process.

39. In the respondent’s letter to the appellant of 11 December 2014 detailed consideration was given to her case and it was concluded, as noted above, that she had been trafficked from Vietnam to Hungary. However it was not accepted that she had been trafficked into the United Kingdom from Hungary, bearing in mind the discrepancies in her evidence in that regard. It was noted that the explanation she gave for this was:

“because the Home Office asked me simply whether I had a relationship with him or not. I said yes and later asked whether I agree or not. I said yes. They didn’t ask me more in detail whether he forced me or not. It is true I got relationship with him because I thought if I have a good relationship he will have a good feeling about me.”

40. It was noted that at interview on 20 July 2011 when explicitly asked whether this man had in any way forced her to have sex with him she responded, “no it was consensual”. This answer was not amended or clarified for over two years. Consideration was also given to a report from Ashiana [not further identified in the decision letter, but assumed to be a reference to the Ashiana Network, which provides help with issues around domestic violence] which provided a self-reported account by the appellant and an explanation for her seemingly inconsistent description of her treatment by this man. The letter writer considered that whilst this explanation was plausible she had not provided evidence to the required standard of proof to substantiate the claim of having been exploited in the United Kingdom. We agree. The clear and significant discrepancy in the appellant’s evidence leads us to conclude that the more recent assertion, that she was trafficked into the United Kingdom and ill-treated, is opportunistic, and the true account of events is the one she gave originally.

41. Consideration was also given to whether it was necessary for the appellant to have a period of leave in the United Kingdom as a victim of human trafficking. There was no information to suggest

that she was assisting with a human trafficking investigation. As regards her personal circumstances, the report from Ashiana said that she had chosen to access counselling which would commence at her GP practice on 17 October 2014, but despite further requests being made to Ashiana and the appellant's solicitor as to whether she had actually entered into counselling, whether the counselling was specifically addressing trauma relating to her exploitation and the required length of any counselling, no information had been received. As such there was insufficient evidence to afford her leave on account of her personal circumstances at the time.

42. The point was made by Mr Duffy that any challenge to this decision might have to be by way of judicial review if it were not to be argued as a decision not being in accordance with the law. Insofar as we have jurisdiction to deal with this matter on a statutory appeal and bearing in mind that the point has not been pleaded, we would consider that it has not been shown that the decision is not in accordance with the law as the respondent has considered the relevant criteria as to whether or not leave should be granted and has come to a conclusion to which she was clearly entitled to come. The relevant requirements of the Anti-Trafficking Convention have been observed by the respondent in the decision as a whole, and there can be no arguable challenge to that decision.

43. On the specific question of whether or not the Convention extends to a situation such as this where a person in the appellant's position is an historical victim of trafficking rather than having been trafficked into the United Kingdom, we note Mr Duffy's submission with regard to page 60 of the respondent's guidance concerning people who had been exploited overseas and the fact that the respondent, unless it is a Dublin II (or now Dublin III) case, considers that the Competent Authority must offer the victim help and protection in the United Kingdom under the Convention. However in the previous paragraph it is said that a person who claims to have been trafficked or exploited overseas and subsequently travels to the United Kingdom of their own accord, independent of their alleged trafficker, and passes through a number of countries on the way, is unlikely to be considered a victim of trafficking for the purposes of the Convention, because they are likely to be far removed from that trafficking situation and therefore very unlikely to benefit from being considered under the Convention.

44. Although the discretion thus set out, and exercised by the respondent in this case goes some way, we consider that it does not answer the point of law which we identified as the reason for reconvening the hearing. In our view the responsibilities of the respondent under the Convention extend beyond the person who has been trafficked into this country to the victim of historical trafficking into the country from which they later travelled into the United Kingdom. It seems to us that that is a proper reading of the terms of the Convention.

45. We derive support for this conclusion from remarks of the Administrative Court in [Atamewan \[2013\] EWHC 2727 \(Admin\)](#). That case was concerned with the question, as set out at paragraph 1 of the judgment: 'what is the extent of the Secretary of State's obligations in respect of a person who was the subject of human trafficking to the UK and in the UK... but who was then able to escape her servitude and who has, comparatively speaking, lived a more normal life since then'. The 2010 version of the respondent's guidance was in issue, in particular, for our purposes, pages 23-24 of the guidance, which dealt specifically with the situation where a Competent Authority believes, at the reasonable grounds stage of the consideration, that someone has been the victim of trafficking but also concluded, on the facts of that case, that the person 'is no longer in need of the protection and assistance offered by [CAT] because the individual's circumstances have changed so much since the trafficking occurred'.

46. Aikens LJ, with whom Silber J agreed, held that this passage in the guidance was based on a misinterpretation of Articles 4, 10(2) and 13(1) of CAT. The use of the present tense in Article 4(e) was used: “in the sense that the person concerned has attained the status of ‘victim’ of trafficking because he is someone who is or has been the subject of any form of “trafficking” as defined in Article 4(a) (para 70). The word ‘victims’ in the heading to Article 10 must mean the same as in Article 4(e): so it meant anyone who is presently, or has been, the victim of trafficking. There was nothing in Article 13 (contrary to the view expressed in the guidance) to warrant the view that Article 13 contracts some of the provisions in Article 10(2) and 12. Article 13 is intended to apply to victims of trafficking who are allegedly present in a Party’s territory or who are legally present with a short-term residence permit, the obligation then being to provide a minimum 30 day period of ‘recovery and reflection’. The last two sentences of Article 13(1) confirm the general obligation set out in Article 10(2) that when a Party has concluded that there are ‘Reasonable Grounds’ that the person is a victim, then that Party must authorise the person concerned to stay in its territory during the ‘recovery and reflection period’. To take an extreme case, even a person who was trafficked to the United Kingdom 30 years ago and thereafter managed to create a new life for himself would, if he then came forward and claimed he was the victim of trafficking, be entitled to the benefit of the Article 10(2) process of deciding whether there were ‘Reasonable Grounds’ for believing he was trafficked.

47. This reasoning, in our view, is clearly applicable to a person in the situation of the appellant, who is equally a victim of historical trafficking, albeit outside the United Kingdom. Although *Atamewan* was concerned with the situation of an historical victim of trafficking into the United Kingdom, the analysis of the Convention, and, in particular what is said about Article 10(2), seems to us to favour an interpretation of the United Kingdom’s responsibility which includes duties owed to a person in the appellant’s position. The wording of the second sentence of Article 10(2): “Each party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been the victim of trafficking in human beings....” does not limit the obligation to a person who was a victim of trafficking into that particular state. The object of the Convention, at least in part, is to enable identification of and assistance to, trafficking victims and where, as in this case, that did not occur in the country into which the victim was trafficked, it would defeat the protective purpose of the Convention if the Article 10(2) duty did not extend to the state to which the victim subsequently moves.

48. However, that does not advance the appellant’s case. The relevant matters have been given appropriate consideration in the decision letter of 11 December 2014 in light of the acceptance that as this was not a Dublin II case, help and protection were required to be offered under the Convention. What we have to say above concerns the respondent’s legal responsibilities in a case where we might otherwise decide that her responsibilities under the Convention were engaged.

49. An issue of significance in this case is clearly the question of the situation that the appellant would face on return to Vietnam. The refusal letter quotes at length from the US State Department Trafficking in Persons Report on Vietnam of 2010 which refers to the Vietnamese government sustaining some efforts to protect victims of transnational sex trafficking and outlines additional victim protection plans in its new anti-trafficking law, though it was said that it did not make sufficient efforts during the year to identify or protect victims of labour trafficking or internal trafficking and had yet to employ systematic procedures nationwide to identify proactively and effectively victims of trafficking among vulnerable populations. There is reference to significant deficiencies in the referral system that exists, though there are three trafficking shelters in Vietnam’s largest urban areas that

provide counselling and vocational training to female sex trafficking victims but the government lacks the resources and technical expertise to support shelters adequately.

50. Mr Lingajothy referred to paragraphs 22.35 to 22.37 of the COIR. This refers to a Freedom House Report of 2011 stating that thousands of women each year are trafficked internally and externally and forced into prostitution. There is reference to a 2007 report of the International Federation for Human Rights that the persistence of trafficking in women and girls and the exploitation of prostitution are issues of concern for the committee. Mr Lingajothy also referred to the point at paragraph 22.34 that domestic violence is not criminalised in Vietnam.

51. The appellant left Vietnam in 2008. The respondent has made the point that Vietnam is a large country of some 90 million people with a number of large cities in it. If the appellant were able to return, a matter to which we shall have to return, she would not be a person of any adverse interest to the government, and the chance of coming across her traffickers is very slight. The Anti-Trafficking Convention and Article 4 do not suggest that a victim of trafficking is unreturnable to the country from which they were trafficked. We consider that she has not shown that she faces a real risk of ill-treatment on return to Vietnam, whether on account of her previous experience as a victim of trafficking or otherwise.

52. She would return to Vietnam as a single mother with three very small children. There is no witness statement from Mr Cuu. He does not have status in the United Kingdom, according to the appellant (Q118 of the September 2014 interview). The appellant's evidence is that they are partners, though they do not live together. It is entirely unclear whether he would accompany the appellant and the children to Vietnam. It has not been shown that the background evidence indicates that returning without her partner and with the children would place her at risk of breach of her Article 3 rights or that even if she is a member of a particular social group of trafficked women from Vietnam, she faces a real risk of harm on that account. It is speculative and no more to suggest that she would face a real risk of coming across her previous traffickers or that as a woman in the circumstances in which she would return she faced a real risk of being trafficked by someone else. We do not understand it to have been suggested that she would be unable to make contact again with her brothers, born respectively in 1989 and 1991, or with her sister born in 1993. There is evidence, in the US State Department Report of 2010, referred to in paragraph 50 above, to support the respondent's conclusion in the decision letter that there is a sufficiency of protection provided by the authorities in Vietnam. Accordingly we find that she has not shown a real risk on return to Vietnam of persecution or a breach of her human rights.

53. As regards the medical evidence, the appellant saw a psychiatrist in September 2011. He assessed her as suffering from depression, falling short of Post-Traumatic Stress Disorder. It was said that she would benefit from being prescribed psychotropic medication, following a discussion with her GP in the first instance, and that her treatment plan might require a further assessment from her local Community Mental Health Team. The most recent report is in a letter from Mr Baker, a counsellor at the Flowers Health Centre in Sheffield. It is dated 12 December 2014. Mr Baker has been treating the appellant since 17 October 2014. He says that she is currently subject to flashbacks, debilitating headaches, nightmares and broken sleep, all of which are symptomatic of Post-Traumatic Stress Disorder, and which severely hamper her attempts to create a normal life. She has also indicated that she has thoughts of suicide.

54. The appellant has made a statutory declaration concerning a visit she made to the Vietnamese Embassy on 28 August 2013 at which time she said she was told that the Vietnamese granted

citizenship through paternity so therefore her children could not obtain citizenship because the nationality of their father is unascertainable or unknown. It seems from her evidence that both the fathers are Vietnamese. She said that she did not have any contact with her siblings or grandmother and she did not know where they were and did not have any paperwork in relation to her nationality including absence of proof of addresses in Vietnam. She has provided a document from the embassy stating that she is not eligible to obtain a Vietnamese passport or travel documents as she is lacking any of the listed types of documents.

55. Mr Saunders produced a copy of the law on Vietnamese nationality. Article 16 states that a person born inside or outside Vietnam has Vietnamese nationality if either of their parents at the time of their birth has Vietnamese nationality. We consider that this is preferable evidence to what was said by the appellant, i.e. what she says she was told as recorded in the statutory declaration, and accordingly it will be possible for her to pass on the Vietnamese nationality to her children, according to this provision. As regards the documentation required to be produced in order to prove Vietnamese nationality, that is set out at Article 11. One of the following is required: first, birth certificate, people's identity card, Vietnamese passport, or decision permitting the naturalisation in Vietnam or adoption. This essentially coincides with the wording of the document produced by the appellant from the Embassy which refers to providing a copy of excerpt of the Presidential Decree granting the holder Vietnamese citizen, current or previous Vietnamese passport, current or previous Vietnam identity card, birth certificate or excerpts of birth register.

56. We agree with the respondent that it should not be beyond the appellant's abilities to obtain a birth certificate or excerpt of the birth register. She has not said that she does not know where she was born, and there can, we think, properly be assumed to be a record of that and for that to be identified and submitted to the Vietnamese authorities. On the evidence we do not accept that the appellant is unable to provide documentation proving her Vietnamese nationality and as a consequence enabling her and her children to obtain documentation enabling them to return to Vietnam.

57. The best interests of the children clearly are a primary, not the primary consideration in assessing the situation under Article 8. They are a family and would return as a family. Mr Lingajothy makes the point that part of Article 8 private life is physical and moral integrity, and that must of course be borne in mind in assessing the proportionality of removal. The appellant was clearly treated very badly while in Hungary and that is bound to have left its mark, as noted by Dr Gupta in his report. It seems that only very recently have the recommendations for further assessment been taken up, as evidenced by the brief report from Mr Baker. Undoubtedly it would be difficult and problematic for her to return to Vietnam having experienced what she did as a result of the trafficking to Hungary, and returning as a single woman with three small children (on the assumption that Mr Cuu does not return with them) and with the symptoms to which Mr Baker refers. The interests of the state in maintaining effective immigration control have to be placed into the balance against the interests of the appellant and of her children. Their best interests are clearly to be with her. We consider that the balance in the proportionality exercise favours the maintenance of immigration control over the interests of the appellant and her children (whose best interests are in staying with her) in remaining in the United Kingdom.

58. This appeal is therefore dismissed on all grounds.

Signed Date

Upper Tribunal Judge Allen

APPENDIX 1

European Convention on Human Rights

Article 4: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term 'forced or compulsory labour' shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.

APPENDIX 2

Relevant provisions of the Anti-Trafficking Convention: [Articles 4, 10, 13]

Article 4 - Definitions

For the purposes of this Convention:

- (a) "Trafficking in human beings" 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 human beings" 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;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age;
- (e) "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.

Article 10 - Identification of the victims

1. Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.

2. Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.

3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.

4. As soon as an unaccompanied child is identified as a victim, each Party shall:

(a) provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;

(b) take the necessary steps to establish his/her identity and nationality;

(c) make every effort to locate his/her family when this is in the best interests of the child.

Article 13 - Recovery and reflection period

1. Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.

2. During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.

3. The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.