

UK victims of trafficking

by Bob Burgoyne and Claire Darwin

Analysis of court cases shows how hard it is for victims of trafficking to win the right to remain in the UK. Case law is inconsistent and more research and data collection are urgently needed.

UK legislation is improving capacity to prosecute traffickers but there has been no enhancement of protection for the victims. The Home Office argues that the current ad hoc system for providing temporary protection while offences are being investigated is adequate. In fact, protection is only likely to be granted in high profile cases and only to those who are useful witnesses to trafficking crimes. There are no procedures in place and no right of appeal against a refusal to grant protection. Consequently, most victims of trafficking have no option but to make an application for asylum or 'humanitarian protection'.¹

We have analysed ten court cases used to serve as precedents for subsequent cases to identify the bases on which an applicant may remain in the UK and the kind of evidence trafficking victims are required to present to win their cases.

Case law is inconsistent on the relevance of membership of a 'social group' (an important category in the 1951 Refugee Convention). In the case of a woman from Kosovo it was accepted that she belonged to a particular social group of "women forced into prostitution against their will". It was also agreed that an Albanian woman was a member of a social group from a region where customary practice allows the kidnapping of young women for brides. However, the Asylum and Immigration tribunal judged that no "women in Tajikistan, or any subgroup of them ... can constitute a particular social group".

Of the cases examined, no appeals were allowed on the basis of a risk of re-trafficking or on the basis

that victims may be at risk of revenge by former traffickers. In the case of a Nigerian victim, although it was accepted that as a teenager she might be at risk of re-trafficking if returned to her home area, it was found she could be relocated elsewhere in Nigeria. The case of a woman from Tajikistan was dismissed because it was considered that Tajik law was sufficiently tough and because, at the age of 28, she was over the age usually targeted by traffickers. In the case of a young Kosovar it was decided that she was not at risk of re-trafficking because of local legislation and the willingness of the UN Interim Administration in Kosovo to investigate such cases.

Some victims of trafficking are forced to pay their traffickers the price of travel to the UK, even if this journey was forced upon them by others. If a victim of trafficking is able to escape the trafficker, that debt may remain unpaid. The young Nigerian victim escaped her traffickers but was told she owed them \$40,000. As with the issue of possible re-trafficking, this argument was dismissed on the grounds that she could hide from her trafficker by moving elsewhere in Nigeria.

When there does not appear to be any evidence one way or another on the risks to trafficking victims in certain countries, the tribunal assumes that no such risks exist. This is unfortunate, particularly in relation to countries where the lack of an independent press can mean that objective reports are hard to come by. Where evidence does exist the tribunal tends to be persuaded by 'official' reports (such as those of the US State Department) and sceptical of claims

to the contrary even by nationals of the country concerned. Reporting about the scale and forms of human trafficking is scarce and there is an urgent need for further research and systematic data collection.

It is a standard objection to an asylum application that the applicant would be safe if they simply moved elsewhere in their country of origin. Such a relocation, however, should not be "unduly harsh". In trafficking cases, the characteristics of the particular country of origin is critical. A country as large as Nigeria may well afford the opportunity for internal relocation whereas a small country such as Albania may not.

a new mechanism to protect the victims of trafficking is urgently needed

In the absence of specific measures to access temporary protection in the UK, trafficking victims have no choice except to apply for asylum. However, the chances of a trafficking victim being able to prove that they would qualify for asylum or humanitarian protection under UK law are very limited. If the UK is serious about confronting trafficking, a new mechanism (outside the asylum system) to protect the victims of trafficking is urgently needed. It remains to be seen whether a recently announced public consultation² will lead to one.

Bob Burgoyne is a caseworker at Trivedy & Viridi Solicitors. Claire Darwin is a pupil barrister. Emails: bob.burgoyne@gmail.com, clairedarwin25@yahoo.co.uk

1. Formerly known as 'exceptional leave to remain', this allows temporary stay in the UK for applicants whose safety is at risk if returned to their homeland but who are unable to meet the rigorous criteria under the refugee definition in the 1951 UN Refugee Convention and 1967 Protocol.

2. www.homeoffice.gov.uk/documents/TacklingTrafficking.pdf?view=Binary