

REMEDIES FOR VICTIMS OF TRAFFICKING



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TRAFFICKING AND IMMIGRATION STATUS

- The different forms of immigration status
- Why the form of status matters
- Obtaining refugee status
- Obtaining humanitarian protection

1. THREE KINDS OF STATUS

- Refugee Status
- Humanitarian Protection
- Discretionary Leave to Remain

Refugee Status

Grant of refugee status

334. An asylum applicant will be granted refugee status in the United Kingdom if the Secretary of State is satisfied that:

- (i) they are in the United Kingdom or have arrived at a port of entry in the United Kingdom;
- (ii) they are a refugee, as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iii) there are no reasonable grounds for regarding them as a danger to the security of the United Kingdom;
- (iv) having been convicted by a final judgment of a particularly serious crime, they do not constitute a danger to the community of the United Kingdom; and
- (v) refusing their application would result in them being required to go (whether immediately or after the time limited by any existing leave to enter or remain) in breach of the Refugee Convention, to a country in which their life or freedom would be threatened on account of their race, religion, nationality, political opinion or membership of a particular social group.

The Refugee Convention

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

Humanitarian Protection

339C. A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

- (i) they are in the United Kingdom or have arrived at a port of entry in the United Kingdom;
- (ii) they do not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iii) substantial grounds have been shown for believing that the person concerned, if 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 themselves of the protection of that country; and
- (iv) they are not excluded from a grant of humanitarian protection.

339CA. For the purposes of paragraph 339C, 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."

Discretionary Leave to Remain

Examples of reasons to grant DLR:

- they do not qualify for refugee leave or humanitarian leave but their removal would violate their rights under Articles 3 or 8 of the ECHR;
- They have been conclusively recognised as victims of trafficking and there are compelling reasons to justify a grant of leave, e.g. they are helping police with enquiries or pursuing compensation.

2. WHY STATUS MATTERS

The form of immigration status affects:

- Length of leave
- How long they must wait for ILR
- Whether they can obtain visas for family
- Access to higher education
- Statutory defences to illegal entry etc.
- Travel documents

3. REFUGEE STATUS

The four conditions to obtain refugee status:

- a risk of re-trafficking;
- insufficient state protection;
- no reasonable possibility of internal relocation to safety;
- a 'Convention reason' for persecution.

Hurdle 1 – risk of re-trafficking

Paragraph 339K of the Immigration Rules:

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

See also *HD (Nigeria)* [2016] UKUT 454 at [4(c)] and *TDT v SSHD* [2018] EWCA Civ 1395; [2018] 1 WLR 4922 at [40].

Hurdle 4 - PSG

- Reg. 6(1)(d) of the 2006 Regs provides as follows:
- *“(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;”*

Overcoming the PSG problem

- Argue that *K & Fornah v SSHD* [2007] 1 AC 412 at [15]-[16] is right and *SB (PSG – Protection Regulations – Reg 6) Moldova* CG [2008] UKAIT 00002 wrong
- Provide evidence that VOT have a distinct identity in the country of return
- Consider other PSGs, e.g. women, unwed mothers, adult VOT

4. Humanitarian Protection

The question - How to prove inhuman or degrading treatment in the country of return if they are being trafficked to a third country?

Possible Answer - Underhill LJ in *TDT v SSHD* [2018] EWCA Civ 1395; [2018] 1 WLR 4922 at [40]: '*trafficking is a process and not a single event*'

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