

HOPE BETRAYED:

**An analysis of women victims of
trafficking and their claims for asylum**

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Acknowledgements

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Finally, we continue to acknowledge the bravery of women trafficked into prostitution who share their often very traumatic experiences with us, both for themselves and to help other women sexually exploited in the sex industry.

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Executive Summary

“Hope Betrayed” considers all the asylum claims made by women who were trafficked into the UK and subsequently supported by the POPPY Project from its inception in March 2003 until August 2005. The report provides the results and commentary on the asylum claims made by this group.

Of the 32 women who claimed asylum during this period, only 1 was granted asylum prior to appeal. Of those whose appeal had been determined at the time of the analysis, 80% were granted either refugee status or humanitarian protection. This is 6 times higher than the acceptance rate of asylum appeals overall. The report compares reasons for refusal letters and asylum determinations by the adjudicators/immigration judges in the context of key aspects of the Refugee Convention, namely, sufficiency of state protection, convention reason and credibility. It points out the lack of acknowledgement of, or adherence to the Home Office’s gender guidance by its own caseworkers. It also notes that the refusal of asylum at the initial stage is particularly serious for women, from a ‘white list’ country, as they have no automatic right of appeal in the UK.

The report suggests a number of potential reasons for the different appeal results. These are identified as:

referral to the POPPY Project

cooperation with the police & immigration authorities

physical safety, practical support and time for preparation of their case

access to quality free legal representation

The report concludes with five recommendations based on the cases analysed. Three relate to the protection needs of trafficked women. The remainder recommend that the Home Office improve its initial decision making, its implementation of its gender guidance, its country information regarding the lack of effective protection and the risk on return faced by victims of trafficking and the general use of information (by caseworkers) which informs decision making.

Finally the report urges the government to put more of its energies into supporting women who have been trafficked into this country by improving their access to the protection available through the asylum determination process.

Contents

Acknowledgements	2
Executive Summary	3
Introduction	5
Rationale	5
Context of Trafficking In The UK	6
Methodology	8
Summary of Key findings	9
Analysis.....	12
Persecution	12
Sufficiency of state protection.....	13
Convention grounds on which claims were made	15
Credibility.....	17
Factors to Consider in the Success of POPPY Cases	20
Conclusion and Ways Forward	24
Summary of Recommendations.....	25

Introduction

Rationale

The POPPY Project is run by the Eaves Housing for Women Ltd, a registered charity and company limited by guarantee. Eaves' core provision is supported accommodation to single homeless women in London. It also administers other projects, including: Lillith a second tier agency which undertakes research, campaigning and lobbying on the issue of Violence Against Women, and Eaves Women's Aid a domestic violence service which provides support advocacy and safe housing for women and children who have experienced violence. POPPY is the first and currently the only project in the UK to provide support and accommodation for women who have been trafficked into the UK for the purposes of sexual exploitation. Set up in March 2003 as a pilot, POPPY combines direct services - support and advocacy with research, development and lobbying. The project is funded by the Home Office and the Association of London Government (ALG).

POPPY provides safe accommodation for up to 25 women and accepts referrals from all over the UK. Women are allocated a senior support worker upon entering the project and their support package includes access to counselling, legal advice, medical treatment and intensive support throughout both police investigations and the asylum/immigration process.

The Refugee Women's Resource Project was set up in 2000 by Asylum Aid, a registered charity which provides free advice and legal representation to asylum seekers and refugees. The project aims to enable women fleeing serious human rights violations to gain protection and support in the UK. RWRP researches and maintains a collection of gender-specific country of origin information accessible to asylum-seeking women and their legal representatives, and provides training and information to advisers, policymakers and NGOs in the sector. The project seeks to use its casework and research expertise to influence and inform domestic and EU-wide policy affecting asylum-seeking women. This is the first project of its kind to specifically address all of these issues.

This report was initiated by the POPPY Project when staff became aware that, although most of the women who claimed asylum were refused by the Secretary of State at the initial stage of the claim, a noticeably high percentage of these were successful on appeal, and granted protection either under the terms of the Refugee Convention or the Human Rights Act. The POPPY Project invited the Refugee Women's Resource Project (RWRP) to work with them on the research report because of RWRP's specialism in dealing with women's asylum claims.

The report aims to provide a snapshot analysis of these women's claims in relation to both the asylum determination process (the way the claim is assessed in law and in practice) and the asylum system (the process and procedure). It concludes with a number of recommendations for best practice in the light of these findings.

Context of Trafficking in the UK

The needs of trafficked women are an extension of the needs of all asylum-seeking and refugee women. However, victims of trafficking have additional needs arising out of the specific nature and circumstances of their persecution. Unlike almost all other refugees, but in common with those trafficked globally for purposes such as domestic slavery or forced labour, women trafficked for sexual exploitation are not necessarily safe once outside their country of origin. The unique nature of trafficking means that it is often only on arrival in another country that the danger becomes apparent. Trafficked women will therefore almost always need protection within their country of destination, to ensure that they are safe from the traffickers. They will need time to come to terms with the reality of their situation and the levels of trauma they have experienced. In countries with more established protection mechanisms in place for trafficked women, this is called a reflection period.

In addition to being displaced and traumatised refugees, women who have been trafficked are also the victims of a particularly heinous form of global organised crime.

The UK has made small but significant measures in providing protection and assistance for victims of trafficking, including the piloting of the POPPY Project. Initially the scheme criteria for admission, specifically excluded women who intended to claim asylum. Campaigning by both our organisations in partnership with others resulted in a swift review and change to the criteria.

The trafficking of women for the purpose of sexual exploitation is both a profound human rights violation and a crime. The recent criminalisation of trafficking in the UK¹ does not specifically state measures to be undertaken to assist and protect victims. The absence of specific legislative measures, such as residence permits, access to statutory services and support to trafficking victims in the UK², means that the protection afforded by the Refugee Convention and the Human Rights Act is currently the only means by which women can ensure that they will not be returned to their country of origin once any police proceedings against their traffickers are at an end.

The sanctuary provided by a grant of asylum is critical for the protection of victims of trafficking for two reasons. First, it prevents the risk of repeat trafficking by not returning the victim to her country of origin. Second, it affords her the opportunity for a period of security, recovery and rehabilitation in the UK. This in turn enables her to become involved as a witness in criminal proceedings, and may make it more likely that she will be prepared to provide evidence against her traffickers.

¹ Trafficking for the purposes of sexual exploitation was first criminalised in the UK under the Nationality, Immigration and Asylum Act 2002. This has now been superseded by the Sexual Offences Act 2003. Under s57(2), S58(2) and S59(2) of this act the maximum sentence available at Crown Court is 14 years and at Magistrates Court there is a maximum sentence of 6 months. Trafficking for other forms of exploitation became an offence in 2005 with the introduction of the Asylum and Immigration (Treatment of Claimants) Act 2004.

² Such as exists for example in Italy, Holland and Belgium

The chance of victims remaining in their destination country to provide evidence has led decision makers in some countries to recognise certain victims of trafficking as refugees or grant them other forms of complementary protection.³ In the UK the Home Office has been reluctant to offer such complementary protection due to their concerns that this could be a “pull factor” for women to access the UK.

³ Canada, Denmark, Germany, Ireland, Norway, Sweden, UK and Australia have all made legal judgments recognising individual victims of trafficking as refugees under the terms of the Refugee Convention. Italy, Belgium and Holland have a system of temporary residence permits.

Methodology

The analysis of information in the study is gleaned from POPPY project case files/records on women who have used the service since 2003. The sample group is based on all asylum claims initiated whilst women were on the scheme, and also those that were underway or awaiting determination at the time of women's arrival. The time parameters of the sample were 14th December 2001 to 25th August 2005. 32 cases were identified within the time frame studied.

The information analysed is both quantitative and qualitative, and shows the decisions obtained by women at the initial and at appeal stage.

The study provides an analysis of the information from the files, specifically the Home Office reasons for refusal letters and the appeal determinations of the Immigration Appellate Authority, the Immigration Appeals Tribunal and the Asylum and Immigration Tribunal⁴. It compares reasons for refusal letters with appeal determinations. It incorporates case studies from the files to illustrate how initial and appeal decisions have been made.

Of all the cases:

8 commenced before the POPPY Project began

1 woman was referred to POPPY before an initial decision was made

5 women became clients of the POPPY Project subsequent to their initial decision being made but before appeal

2 women became clients after their Adjudicator appeal hearings.

The initial intention of the study was to compare POPPY cases with those of trafficked women who had not received support from the Project. However, it quickly became apparent that it was not possible to obtain sufficient detail in order to make such a comparison viable. The findings and details from the POPPY Project case information were of sufficient interest to enable a thorough analysis without comparative data.

The Home Office statistics were used to provide a baseline for asylum acceptances and rejections and this report compares POPPY's results with these. Since 2001, the annual statistics have included a breakdown of applications and decisions by gender. However, there is no such gender-disaggregated information published relating to appeals.

⁴ The 2-tier IAA (Immigration Appeals Authority) system became the unified one-tier AIT (Asylum & Immigration Tribunal) under the Asylum & Immigration (Treatment of Claimants) Act 2004. To date, in this study two out of the twenty cases where an appeal has been heard have been dealt with under the new system.

Summary of Key findings

32 claims were submitted to the Home Office

1 case was successful prior to the appeal stage (the claim was refused and an appeal submitted but the Home Office granted Humanitarian Protection for three years on a discretionary basis before the appeal was heard.)

3 remain undecided at the time of writing and two were abandoned by the claimant before an initial decision was reached

26 were refused by the Home Office at initial decision stage. This means that all the cases on which the Home Office made a decision were refused at the initial stage (see fig 1).

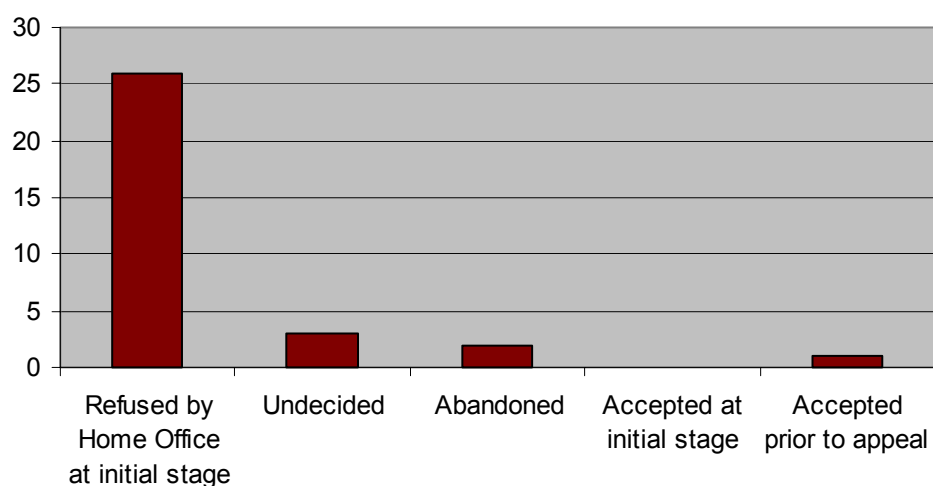


Figure 1: Results of All Initial Decisions in This Study

This compares with the Home Office statistics which state that during 2003, 81 % of initial decisions made on women's asylum applications were refusals.⁵ In comparison with Home Office statistics, the women in this study appear to have a marginally higher rate of refusals at the initial decision stage than all other female asylum seekers.

Of the 26 cases refused at initial stage, 12 decisions were overturned at appeal stage – that is to say, the adjudicator decided that the Home Office was wrong to refuse the asylum and/or human rights claim, and allowed the appeal in favour of the applicant. Of the 12 successful appeals, three quarters (n=9) were granted indefinite leave to remain under the terms of the Refugee Convention and one quarter (n=3) were granted humanitarian protection under the Human Rights Act.

⁵ Tina Heath, Richard Jeffries and James Purcell (August 2004) Asylum statistics United Kingdom 2003. Issue 11/04. London: Home Office.

Of the remaining cases refused at initial stage:

3 were dismissed on appeal

4 women left contact with the POPPY project prior to appeal

1 was granted residence as an EU citizen

5 cases are still ongoing (see fig 2).

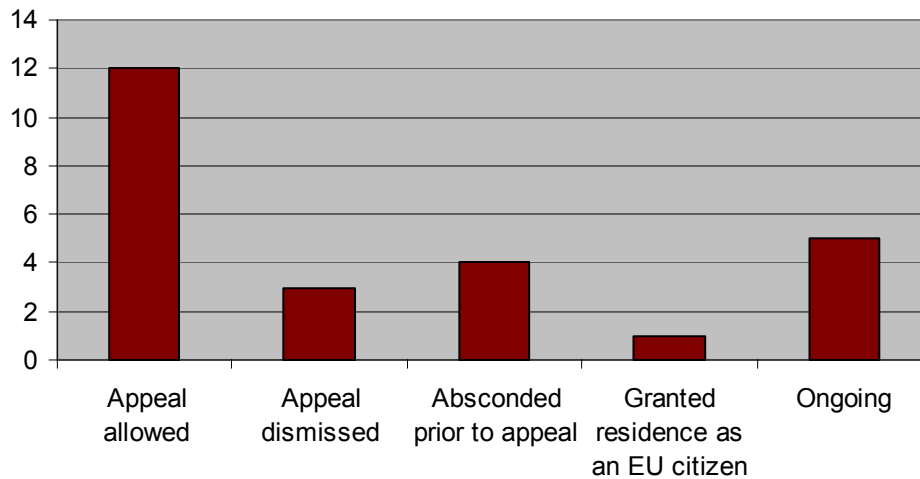


Figure 2: Results of All Appeals in This Study

There were 15 cases where the appeal has been determined. Of these 15, a total of 12 were allowed and 3 were dismissed. This means that 80% of cases that have had their appeal determined were allowed on appeal.

For the period between 2001 – 2004, where Home Office statistics were available, the percentage of appeals allowed nationally was:



Yet for the POPPY cases, the percentage of appeals allowed was 80%. This is six times higher than in cases generally.

⁶ *Ibid.*

This shows that trafficked women supported by POPPY were six times as likely as any other asylum seeker to succeed at appeal.

Considering the final results of all the 32 asylum claims, the results are as follows (see fig 3):

- 9 were granted Indefinite Leave to Remain
- 5 were granted Humanitarian Protection
- 3 were dismissed on appeal
- 2 were abandoned pre-initial decision
- 1 granted residence as EU citizen
- 4 absconded prior to appeal
- 5 are ongoing
- 3 are undecided, i.e. no initial decision yet

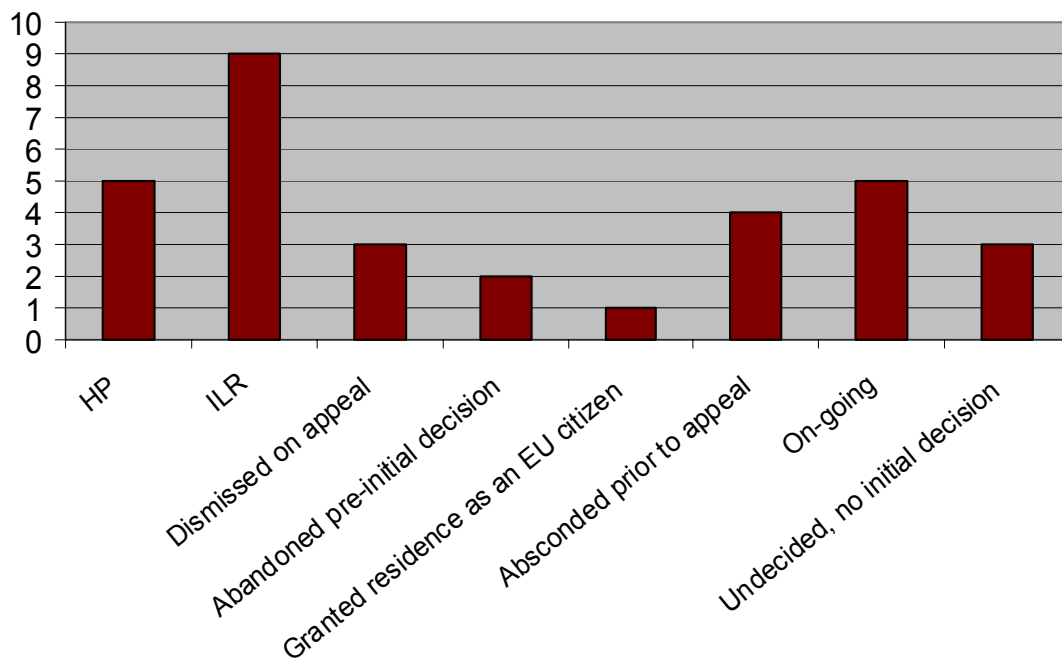


Figure 3: Final Results of All Asylum Applications in This Study⁷

⁷ See Annex for table of cases.

Analysis

The report examines the way in which initial decision-makers have applied, or failed to apply, their own Gender Guidelines to the trafficking cases in our sample. The chosen subheadings reflect particular areas where it is difficult for practitioners to incorporate the experiences of trafficked women into the Refugee Convention – namely, sufficiency of state protection and convention reason (membership of a particular social group). In addition the report assesses the Home Office findings on credibility – an issue in both Refugee Convention and ECHR claims – in these cases.

Persecution

In the UK, claiming asylum means asking for protection under the terms of one or both of two main legal instruments: the Human Rights Act⁸ and the Refugee (Geneva) Convention⁹. Recent changes in Home Office policy have made the grants of leave and entitlements similar under both frameworks¹⁰. However, a person is only recognised by the UK as a refugee if their claim under the Refugee Convention is successful.

The Human Rights Act (HRA) incorporates into UK law most of the key human rights enshrined in the European Convention on Human Rights (ECHR). It affords, in theory at least, absolute and ‘no-strings’ protection against inhuman or degrading treatment, whether deliberate or accidental, and whether committed by state authorities or by non-state actors. It also offers protection against removal from the UK if removing a person would mean that they would be subjected to inhuman or degrading treatment (even if that treatment took place in another country).

The Refugee Convention is much more restrictive in terms of the criteria it applies to those who would claim its protection. According to Article 1A (2) of the 1951 Convention, the term “refugee” applies to any person who:

...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

8 The Human Rights Act (1998), enacted in 2000, incorporated into UK law some of the key provisions of the European Convention on Human Rights (ECHR, 1950).

9 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol

10 Recognition as a refugee now brings a grant of 5 years’ leave, after which time an application for indefinite leave to remain (ILR) can be made. Under the HRA, Humanitarian Protection (HP) will normally be granted for up to 5 years, after which time an application for ILR can be made. In cases where the threshold for protection under Article 3 is not met, but where there is a risk of other key human rights being breached, or the applicant is an unaccompanied minor, or there are extreme medical or other exceptional circumstances in the case, then Discretionary Leave will be granted for up to 3 years. An application for ILR can be made after 6 years of DL.

These terms have been subject to the most intense legal scrutiny over the years since the Convention was drafted. Historically, the interpretation of what might constitute, for example, 'political opinion,' or what kind of harm might amount to 'persecution', has been framed from within a traditional male perspective of activism or incarceration. However, this approach has been challenged in recent years and a concerted attempt has been made to incorporate a gendered perspective.

It is acknowledged by the United Nations High Commission for Refugees (UNHCR) and by the Home Office that trafficking and forced prostitution can constitute persecution.¹¹

In the UK, the Immigration Appeals Authority (IAA) published the Asylum Gender Guidelines¹² in November 2000 to provide guidance to adjudicators in dealing with gender issues in appeal cases. The Home Office integrated these guidelines into its own instructions to asylum caseworkers in March 2004¹³. All of the cases studied in this report were processed at a time when the IAA guidelines were in place, and 10 cases (i.e. a third of them) were dealt with whilst the 2004 Home Office Asylum Policy Instruction was in force.

Sufficiency of state protection

Under the terms of the Refugee Convention, if an individual fears persecution from non-state agents or from agents acting outside the authority of the state (for example, traffickers), it is necessary to show that the state is unable or unwilling to offer effective protection. The onus is on the claimant either to show that they have sought the protection of the authorities and that it was ineffective, or to explain why they have not done so.

There are often particular reasons why women may not feel able to approach the authorities for protection. The Home Office Gender Guidelines on the failure of state protection acknowledge that:

*It is not always reasonable or possible for a woman to alert the authorities to her need for protection for example, if by doing so she risks violence, harassment, and rejection by her society or even persecution.*¹⁴

Decision makers rely on country information reports provided by the Country Information and Policy Unit (CIPU) at the Home Office to give them background information about applicants' countries of origin.

16 of the 26 cases refused at the initial stage were refused in part, on the basis that there was a sufficiency of protection in their country of origin.

11 Office of United Nations High Commissioner for Refugees, Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1a(2) of the 1951 Convention and Its 1967 Protocol Relating to the Status of Refugees, U.N. Doc. HCR/GIP/02/01 (2002).

12 Nathalia Berkowitz and Catriona Jarvis, Immigration Appellate Authority (November 2000) Asylum Gender Guidelines

13 Home Office Immigration & Nationality Directorate Home Office (March 2004) Gender issues in the asylum claim Asylum Policy Instruction (API) http://www.ind.homeoffice.gov.uk/ind/en/home/laws___policy/policy_instructions/apis/gender_issues_in_the.html

14 Ibid, para 5

The Home Office Gender Guidelines state that:

*...failure of state protection may [include]... lack of police response to pleas for assistance and/or reluctance or failure to investigate, prosecute or punish individuals...*¹⁵

Case Study 1

K, an ethnic Russian woman from Latvia, was trafficked to the UK and forced into prostitution. When she escaped, she told the police everything as she was assured confidentiality. The following week, the police told K's husband in Latvia what had happened to her. Her husband reacted very badly and started verbally threatening K over the phone from Latvia. At the same time, K's traffickers found her and beat her, claiming that if she left London she would not return home alive.

Despite this, the Home Office stated:

*Your claim that the Latvian police would not afford you the protection you claim to require because you are ethnic Russian has also been noted. There is no evidence of a state-sponsored policy or practice of discrimination against non-Latvians. There is an effective witness protection scheme in place in Latvia. As such it is considered that if you felt you required specialist protection against the traffickers you could make enquiries in Latvia. As to whether you would be eligible for such a scheme it is considered that if you faced abuse from your husband or felt that there was a genuine possibility that your husband would be violent towards you in the future, there is sufficient protection available to you. It is considered reasonable to expect you to make every effort to receive the protection you claim to require in Latvia.*¹⁶

Case Study 2

G was trafficked from Albania into a number of countries and returned to Albania before being trafficked into the UK. The refusal letter in her case acknowledged the inadequacies of shelters and facilities for trafficked women in Albania and accepted evidence showing that the police were:

...often involved directly or indirectly with traffickingit is accepted that the Albanian authorities must introduce further measures to combat the problem of trafficking.¹⁷ ...Traffickers who are arrested were often released due to insufficient evidence, and if prosecuted were often charged with lesser crimes or were given less than the minimum sentences for trafficking.¹⁸

¹⁵ supra

¹⁶ Reasons for Refusal Letter, dated 4/08/2004 paras 27, 33, 35, 39

¹⁷ Ibid.

¹⁸ supra n.14

Nevertheless, the Home Office concluded that:

*If you were to have similar problems in Albania again there are a number of avenues of redress open to you.*¹⁹

G won her appeal against the Home Office decision on both asylum and human rights grounds, and was granted full refugee status.

Convention grounds on which claims were made

Of the 32 women in our sample, 26 claimed asylum on the basis of their membership of a particular social group, sometimes in combination with other convention reasons.

Of the remaining 6:

2 claimed on the basis of political opinion

2 on the basis of religion

1 was unclear as her original asylum application was not available

1 applied outside Immigration Rules on the basis of exceptional and compassionate circumstances because of her HIV positive diagnosis.

In order to qualify as a refugee under the terms of the Refugee Convention it is not only necessary to show that claimants have a well-founded fear of persecution from state agents, or from non-state agents against whom the state cannot or will not offer the claimant effective protection. It is also necessary to show that the persecution feared is for one of the named convention reasons – namely race, religion, nationality, political opinion, or membership of a particular social group.

This last category – membership of a particular social group – has over the years become something of a miscellaneous or “other” category for claims which do not easily fall within the other convention grounds.²⁰ It has also become the de facto test category for developing international and domestic case law in the area of gender-related persecution.

That women might qualify as members of a particular social group was first suggested by the European Parliament in a 1984 resolution, and in 1985 the UNHCR Executive Committee Conclusion “recognised that states...are free to adopt the interpretation that women asylum-seekers...may be considered as a 'particular social group'.”²¹

19 supra n.14

20 It is not known what the framers of the 1951 Convention had in mind when Sweden asked for this group to be added, at the last minute and with little discussion, to the wording of Article 1(A) 2 – although there has been speculation that it was meant to afford protection to homosexuals, who also feared persecution under the Nazi regime but who, unlike Jews, gypsies and communists, were not protected under the article's other provisions.

21 United Nations High Commission for Refugees: Refugee Women and International Protection, Ex.Com. Conclusion No.39 para (k)

In the UK, the first successful case to establish that women could be recognised as members of a particular social group was that of Shah and Islam²² in 1999. In this landmark case, the House of Lords found that ‘women in Pakistan’ could qualify as a particular social group for the purpose of the Refugee Convention. This was because women in Pakistan shared an immutable characteristic (gender), were discriminated against as a group in matters of fundamental human rights, and were denied adequate state protection because of this discrimination.

The ruling made clear, however, that ‘women’ per se could not simply constitute a particular social group without reference to the prevailing social, political, legal and cultural conditions in the country of origin; and that each case must therefore be assessed on the facts. It is important to note that the social group should exist independently of the persecution itself. This is problematic when trying to formulate a social group to include victims of trafficking, because victims of trafficking as only constitute a social group, as a result of the phenomenon of trafficking.

The Home Office Gender Guidelines follow the reasoning set out in Shah and Islam in setting out how caseworkers should assess claims based on membership of a particular social group.²³ However, the study shows that initial decision-makers still seem reluctant to recognise victims of trafficking as a particular social group.

Of the 26 cases refused at the initial decision stage, 63% (n=17) were refused in whole or in part because their claim was not based on a Convention ground. The following extracts from reason for refusal letters are typical:

*The reason you have given for claiming a well-founded fear of persecution...is not one that engages the United Kingdom's obligations under the Convention.*²⁴

*The IAT determination of K (00023) 2003 has been given careful consideration. However, that judgment related expressly to women from the northeast of Albania. Conversely, you are from [...] the Southeast of the country. It is not accepted that your circumstances bring you within the scope of the Convention by virtue of membership of a particular social grouping.*²⁵

*Women trafficked for the purposes of prostitution do not form a social group within the terms of the 1951 United Nations Convention.*²⁶

22 Shah and Islam [1999] INLR 144

23 Supra n.11 above and Home Office Immigration & Nationality Directorate API, Assessing the claim (API) http://www.ind.homeoffice.gov.uk/ind/en/home/laws___policy/policy_instructions/apis/assessing_the_claim.html

24 Reasons for Refusal Letter dated 24th June 2003, para 21.

25 Reasons for Refusal Letter dated 24 May 2004

26 Reasons for Refusal Letter dated 8th May 2004

Yet, at appeal stage, these findings have been overturned in a number of cases. The adjudicator in the case of G, for example, stated:

*The appellant's gender and her history are put forward as immutable characteristics which amount to membership of a particular social group, namely women from Albania who have been trafficked into prostitution. I accept this submission. Prostitutes, whether trafficked or not are a recognised group in many if not all societies.*²⁷

In the case of S, the Adjudicator found that the applicant was a member of the particular social group of "trafficked women from Nigeria."²⁸ In his judgment:

*It is abundantly clear that other than the act of persecution, trafficked women share certain attributes in common...the characteristics referred to above are innate in the sense that it is not within a member of the group to change those. While some of the characteristics may be determined to be neither unalterable nor fundamental to their existence, but nevertheless as a result would be perceived by society as a recognisable group.*²⁹

Credibility

Whilst the burden of proof rests on the asylum claimant to demonstrate that their claim is credible, it is not always possible for women to provide evidence to corroborate a claim. Home Office guidance to IND asylum caseworkers states that:

It is for the claimant to furnish the facts of the case in the first instance and for the decision-maker to assess the validity of the evidence and the credibility of the claimant's statements. Asylum claimants often rely to some extent on their own evidence about matters that cannot be checked. Many have no alternative and the absence of proof in itself is no reason to refuse an application. For this reason the benefit of any doubt must be given to the claimant where:

the claimant has made a genuine effort to substantiate the claim;

all available evidence has been obtained and checked;

*the claimant's statements are coherent and plausible and do not run counter to other evidence); and the decision-maker is satisfied of the claimant's general credibility.*³⁰

²⁷ From the determination 9th September 2004

²⁸ In reaching his conclusions, the Adjudicator relied on Shah and Islam [1999] INLR 144 and the IAT decision in JO, 18th June 2004.

²⁹ IAA determination promulgated 16th December 2004, para 74.

³⁰ Supra. n.21 above

In practice however, decision-makers routinely refuse claims on the basis of credibility. In the sample, of the total 26 cases refused at the initial stage, the Home Office refused 10 wholly or partly for this reason. That is to say, they were simply not believed.

Case study 3

C was 17 when her boyfriend sold her to three men who trafficked her from Moldova to Romania, Belgium and Italy. Eventually she met a man who promised to arrange for her to travel to the UK where she was again forced into prostitution.³¹ Refusing her claim for asylum, the Home Office reasons for refusal letter stated:

The fact that you failed to claim asylum in Italy...further reduces the reliability of your claim for international protection. By making your application for asylum after several months without a valid believable reason for not claiming on arrival, you have failed to [present without delay to the authorities]³²

The decision fails to take into account the women's situation, the constraints on her freedom of movement and the lack of opportunities to seek assistance. Yet the Gender Guidelines state:

There may be a number of reasons why a woman may be reluctant to disclose information for example feelings of guilt, shame, concerns about family dishonour.³³

C was later granted Humanitarian Protection.

Case Study 4

S was encouraged by a 'friend' to leave Nigeria for the UK; where she hoped to attend college. This 'friend' later threatened to kill her if she did not repay £40,000, which was the cost of arranging her travel to the UK. She was forced to sell sex. S eventually managed to escape after 18 months. She obtained legal advice and a psychological report of her trauma was submitted with her asylum claim. The Home Office refusal letter stated:

It is noted that at your asylum interview you were very unsure of dates, which, if your claim were true, ... should have been firmly impressed on your memory. Failure to recollect dates integral to your asylum claim seriously undermine[s] the credibility and veracity of your account.³⁴

31 Statement dated 8th March 2002.

32 Reason for Refusal Letter dated 8th July 2002.

33 Supra. N.11 above, para 9

34 Reason for Refusal Letter dated 18th December 2003.

This conflicts with established case law on the effects of trauma on memory, and to the Home Office Gender Guidelines on interviewing and credibility which state:

Women who have been sexually assaulted may suffer trauma. The symptoms of this include persistent fear, a loss of self-confidence and self-esteem, difficulty in concentration, an attitude of self-blame, a pervasive loss of control and memory loss or distortion.³⁵

At appeal the negative aspersions cast on her credibility by the Home Office were overturned. The adjudicator allowed her claim under both the HRA and the Refugee Convention.

Case Study 5

The 'reasons for refusal' letter in this case also demonstrates a failure to consider the constraints under which trafficked women live.

The Secretary Of State [...] notes that you only claimed asylum on 15th March 2002 after you had worked illegally as a prostitute in the United Kingdom. By making your application for asylum after several months without a valid believable reason for not claiming on arrival, you have failed to do so. [sic] He also notes that at no point during your time in the UK have you contacted the Home Office to indicate your wish to remain in the UK, or even a fear of return to Albania. Even allowing for this, he notes that you have not contacted a solicitor for independent legal advice on your immigration status. He concludes that you have fabricated your basis of claim in an attempt to prevent your removal from, and remain in, the UK, and that your application is an abuse of the UK's asylum provision. As a consequence, there is little, if any, of your account which he considers to be reliable or genuine. He is also of the opinion that your motive for coming to and attempting to remain in, the UK illegally and undetected are for reasons other than the need for sanctuary³⁶

At appeal, the adjudicator dismissed this claim under the Refugee Convention, but allowed the appeal under the Human Rights Act.

³⁵ Supra n.11 above, para 8.

³⁶ From Reasons for Refusal letter, 8th July 2002

Factors to Consider in the Success of POPPY Cases

80% of cases taken to appeal were allowed.

The sample of cases is too small to draw definitive conclusions from the available data. It was also not possible to compare these cases with non-POPPY cases, and no comparative figures are available from the Home Office of how trafficking cases in general have been determined at initial and appeal stages.

Nevertheless, it is striking that the number of POPPY cases refused at initial stage by the Home Office, but later allowed on appeal, is six times the national average for all asylum claims in the UK during 2001- 2004. There are a number of possible reasons for this:

Initial referral to POPPY Project from Home Office/IND

Support from the POPPY project may increase a claimant's chance of success, or, at the very least, make it more likely that she will be found credible. The fact that the Home Office/ Immigration and Nationality Directorate (IND) have referred women to the POPPY Project has been submitted as evidence in all asylum claims considered here, but has been specifically cited by asylum adjudicators as a reason for accepting credibility in only three cases.

*I heard evidence first from K, a senior support worker with Eaves Housing who confirmed that the appellant was referred to an organisation by the police after being interviewed by an immigration officer. She said that the organisation was funded by the Home Office and the criteria for deciding who should have access to their limited resources were very strict. They had to be satisfied that the woman had been brought to the UK, had worked as a prostitute and had been forcibly exploited. Though the referral in the appellant's case had been seen by the police she had also been screened by the organisation itself. To her knowledge all women referred to the POPPY project had been interviewed by an immigration officer. They were obviously only referred when the Immigration Service and police were satisfied that the relevant criteria were met.*³⁷

*P (for the Home Office) relied on the fact that the appellant had made a previous false claim for asylum to indicate a lack of credibility on the appellant's part. However, the making of the false claim is clearly a part of the appellant's current claim and is entirely consistent with the evidence given by F (POPPY Project) as to her experiences with many other clients of the project and with the objective at page 101 of the appellant's bundle that "anecdotal evidence also suggests that some women are instructed by their traffickers to lie about their identity if they are caught by the immigration services"*³⁸

³⁷ Determination, 24/03/04 p3, point 7

³⁸ Determination, 13/09/04, p7, point 30

This failure to take the circumstances of the applicant into account suggests poor decision-making on the part of individual IND caseworkers.

Co-operation with police & immigration authorities

In order to be eligible for temporary protection within the POPPY Project, victims of trafficking must be prepared to give evidence to the police. Women are also required to co-operate fully with the immigration authorities, including co-operating with arrangements for their own removal if and when police investigations are at an end and/or her asylum claim is unsuccessful. While the study did not find any conclusive evidence, this suggests that co-operation may have bearing upon the perceived credibility of a claim.

If this is true, it is of concern. Whether or not a woman succeeds in her asylum claim *should not* depend on her willingness or otherwise to cooperate with the police and immigration authorities in relation to any prosecution they may wish to bring against her traffickers.

The possibility of a period of reflection which includes time for making an asylum claim is an important mechanism to ensure victims' safety, and profoundly influences decisions about whether or not to co-operate with the authorities. In Italy, the implementation of Article 18 of the Consolidation Act, which provides temporary protection to victims of trafficking regardless of whether they choose to testify against their trafficker, has resulted in more survivors being willing to testify.

Women at the POPPY Project have up to 12 weeks to consider whether or not they are prepared to give evidence to the police, and/or whether or not they wish to claim asylum, before there is any threat of removal. This time, spent housed in secure accommodation and with access to support workers, medical and counselling staff, and competent female legal advisors, may enable women to prepare their cases and to deal with some of the issues of trauma, late disclosure and lack of evidence that are often used to discredit and dismiss their asylum claims.

The POPPY Project's evidence shows that trafficked women often feel confused by the different approaches of the authorities. For example, the police view trafficked women as victims and potential witnesses and make provision for support and accommodation, yet immigration services focus on the immigration offences linked to their case. POPPY's role as support providers enables women to negotiate these two positions and be seen primarily as women in need of support, which may then influence their decision to co-operate if they feel well supported.

Physical safety, practical support and time for preparation of cases

The explanation of the asylum process to those applying for asylum is generally inadequate. Often women are unaware of the process and unsure how to apply or what is expected of them as applicants.

The police are unable to give advice to women about claims for asylum as it could be deemed as an incentive and or perceived to contaminate evidence given in court against traffickers. Similarly, the immigration service cannot provide information on asylum because of the overall focus on removal/deportation.

There is an urgent need for independent adviser presence at the early stages of identification of trafficked women in order to ensure that their *right to receive information* is upheld.

Recommendation 1

In line with the provisions of the European Convention on Action against Trafficking in Human Beings³⁹, protection, support and assistance measures should be made available for trafficked women. *Such measures should recognise that trafficking is a human rights issue.* The current resources need to be expanded to provide more independent specialist sources of assistance.

Recommendation 2

Measures should be taken to ensure that victims of trafficking have full information about, and access to, the asylum system at the earliest opportunity.

Trafficked women should have the right to free and quality legal advice from lawyers who are familiar with the Gender Guidelines and have appropriate experience and expertise in dealing with gender-based persecution.

Women on the POPPY Project who wish to claim asylum are offered access to experienced and accredited female legal advisors who are familiar with representing women who have experienced gender based violence, which includes trafficking for the purposes of sexual exploitation. Clearly, this may increase their chance of a successful asylum claim, particularly in the current climate of reduced legal aid for immigration and asylum solicitors.⁴⁰

Recommendation 3

To improve initial decision making and ensure the implementation of the Gender Guidelines

It is possible that such a high proportion of POPPY cases were successful on appeal simply because the initial decisions were flawed and did not take sufficient account of the Home Office's own gender guidelines.

38 At the time of writing, the UK had not signed up to this Convention

40 From April 2004 the number of hours of free legal representation available to asylum-seekers was drastically reduced. Many experienced and conscientious legal practitioners closed down or stopped doing legal-aid funded work altogether, making it even harder for vulnerable clients such as trafficking victims to find the kind of specialist representation they needed. See Justice Denied (2005) Bail for Immigration Detainees and Asylum Aid, p 26-7

The case studies quoted above show a particular reluctance at initial decision-making level to find trafficking victims credible, and to address the issue of insufficiency of protection for trafficking victims in their countries of origin.

Both issues could be addressed by the provision of better resourced, gender-specific research into the role, status and treatment of women, and particularly of returned trafficking victims, in their countries of origin. The implementation of Gender Guidelines in the assessment and adjudication of claims is essential.

This will be crucial in cases where the claimant is from a country which has no in-country right of appeal, the so-called 'white list' or Non-Suspensive Appeal (NSA) countries.⁴¹ In the sample we have considered for the purpose of this report, 12 cases which were refused at initial decision stage were later successful at appeal. Of these, three were from Albania which is now on the 'white list'. This means that if they made the same claim today, and for the same reasons, these women would be expected to return to their countries of origin as soon as the Home Office decision was made, and somehow to pursue their appeal through the UK immigration courts from there.

Recommendation 4

In order to improve initial decision making the Home Office should ensure that all IND caseworkers are equipped to make decisions informed by the Gender Guidelines, with particular reference to the issues of gender-based persecution and the specific difficulties trafficked women face in obtaining protection.

Recommendation 5

The Home Office must update country of origin information to take into account the lack of effective protection and the risk on return faced by victims of trafficking based on credible evidence from a variety of sources.

⁴¹ At the time of writing the 'safe list' countries include: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland Slovakia and Slovenia, Albania, Bulgaria, Jamaica, Macedonia, Moldova, Romania Serbia, & Montenegro, Bangladesh, Bolivia, Brazil, Ecuador, Sri Lanka, South Africa and Ukraine. Claims from these countries are also subject to the NSA (or 'white list') procedure. This means that if a claim is refused at initial decision-making stage, there is no automatic in-country right of appeal. The claimant will be removed from the UK and expected to pursue her right of appeal from within her country of origin. This clearly has particular implications for victims of trafficking, since many of the NSA (or 'white list') countries deemed 'safe' are in fact source or transit countries for traffickers. Safe for Whom? Asylum Aid June 2004

Conclusion and Ways Forward

Analysis of the sample POPPY cases demonstrates that women trafficked into the UK have limited chances of achieving a positive outcome on their claim. Yet, at the appeal stage, outcomes are six times more successful than for asylum seekers in the UK in general.

Currently, women from 'white list' countries where the NSA procedure applies cannot have their appeal determined until they have been returned to their country of origin. Therefore the only way that women can make the appeal, which may ultimately keep them safe, is to return to their home countries where there are high risks of reprisal/violence/further exploitation/retrafficking.

At the time of writing, the Government had still not ratified the Council of Europe Convention on Action Against Trafficking in Human Beings. During the period of this research, a coalition of UK based NGO's including Amnesty International, Anti-Slavery International, UNICEF UK and the Women's Institute launched a campaign to urge the UK government to ratify this convention, which identifies trafficking as a violation of human rights and contains minimum standards for the protection of the rights of trafficked persons. In the same period, the Joint Committee on Human Rights held an Inquiry into the Human Rights of People Trafficked into the UK and the Home Office launched a consultation on the UK's first National Action Plan to Tackle Human Trafficking.

The issue of trafficking is topical and receiving considerable attention from the media. This heightened awareness has clearly not fully permeated into the asylum decision making process. The initial decisions analysed in this study show a profound lack of recognition of the protection needs of trafficked women, their eligibility for asylum, and little use of the Gender Guidelines.

The process of appealing against a flawed initial decision delays the final outcome by many months and is extremely stressful. If trafficked women are to receive the protection they need without such prolonged delays, improvement in the quality of initial decision making is essential.

This study highlights the marked differences in initial and appeal decisions. Possible reasons include a referral to the POPPY Project by law enforcement agencies, the support and confidence provided by the POPPY Project and access to good legal advice which includes an understanding of trafficking issues. *However, women who have been trafficked should not have to rely on a referral to the POPPY Project or the chance of obtaining a legal representative well versed in the issues of trafficking, in order to receive the protection they need.*

The Government has announced it's commitment to tackling trafficking in human beings and providing assistance to the victims. If this is to translate into reality, the needs of victims must be central to policy, procedure and practice. The asylum process is the key mechanism to provide protection.

Summary of Recommendations

We propose the following recommendations based on the cases we have analysed in this report.

1. In line with the provisions of the European Convention on Action against Trafficking in Human Beings, protection, support and assistance measures should be made available for trafficked women. Such measures should recognise that trafficking is a human rights issue. The resources that exist at present need to be expanded to provide more independent specialist sources of assistance.
2. Measures should be taken to ensure that victims of trafficking have full information about, and access to, the asylum system at the earliest opportunity.
3. Trafficked women should have the right to free and quality legal advice from lawyers who are familiar with the Gender Guidelines and have appropriate experience and expertise in dealing with gender-based persecution.
4. In order to improve initial decision making the Home Office should ensure that all IND caseworkers are equipped to make decisions informed by the Gender Guidelines, with particular reference to the issues of gender-based persecution and the specific difficulties trafficked women face in obtaining protection.
5. The Home Office must update country of origin information to accurately reflect the lack of effective protection and the potential risk on return faced by victims of trafficking when returning. This evidence must be obtained from a variety of sources.

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SSHD v Dxhygun [00TH00728]

Appendix

Table of POPPY cases

Country of origin	Basis of Claim (Refugee Convention/ECHR)	Initial Decision	Appeal outcome (IAA/AIT)	Post-appeal outcome (IAT/CA/further reps)	Status Granted/Final outcome
Albania	PSG	Refused	Dismissed	N/A	HP (3 years)
Albania	Articles 2, 3, 4, 5, 8 and 14	Refused	Allowed		
Albania	PSG	Refused	Allowed	N/A	ILR as refugee
Albania	Articles 2, 3, 8 & 14	Refused	Allowed	N/A ⁴²	ILR as refugee
Albania	PSG	Refused	Allowed		
Albania	Articles 2, 3, 4, 5, 8 and 14	Refused	Allowed		
Bulgaria	PSG	Refused	N/A	N/A	RFD ⁴³
Bulgaria	Articles 2 & 3	Refused	N/A		

⁴² Home Office did not appeal IAA decision

⁴³ Applicant absconded after initial decision and prior to appeal

Country of origin	Basis of Claim (Refugee Convention/ECHR)	Initial Decision	Appeal outcome (IAA/AIT)	Post-appeal outcome (IAT/CA/further reps)	Status Granted/Final outcome
Cameroon	PSG Articles 2 & 3	Refused	Dismissed	N/A	RFD ⁴⁴
DRC	Political opinion Article 3	Refused	Allowed	N/A ⁴⁵	ILR as refugee
Ghana	PSG	Refused	Allowed	As above	ILR as refugee
Jamaica	Not clear from documentation available	Refused	<u>Dismissed</u>	IAT hearing pending ⁴⁶	ONG
Latvia	PSG Articles 3 & 8	Refused	N/A ⁴⁷	N/A	ABD Residence granted as EU citizen

⁴⁴ Dismissed at appeal, leave to appeal to IAT refused.

⁴⁵ HO did not apply for leave to appeal to IAT

⁴⁶ Leave to appeal to IAT granted.

⁴⁷ Asylum claim withdrawn prior to appeal following accession of Latvia to EU 1st May 2004

Country of origin	Basis of Claim (Refugee Convention/ECHR)	Initial Decision	Appeal outcome (IAA/AIT)	Post-appeal outcome (IAT/CA/further reps)	Status Granted/Final outcome
Lithuania	PSG	N/A ⁴⁸	N/A	N/A	ABD
Moldova	PSG	No decision yet made	N/A	N/A	Residence granted as EU citizen
Moldova	PSG	No decision yet made	N/A	N/A	UND ⁴⁹
Nigeria	Articles 2 & 3 PSG	Refused	Allowed	Allowed ⁵⁰	ILR as refugee
Nigeria	Articles 2 and 3 PSG	Refused	Allowed	N/A ⁵¹	ILR as refugee
Nigeria	Articles 2, 3 PSG Articles 2 & 3	Refused	Allowed	Reconsideration hearing pending ⁵²	ONG

⁴⁸ Claim withdrawn prior to HO decision following accession of Lithuania to EU 1st May 2004

⁴⁹ Application was made in April 2003.

⁵⁰ SSHD was granted leave to appeal to the IAT but the application was dismissed

⁵¹ SSHD granted leave to appeal to IAT but withdrew appeal prior to hearing

⁵² SSHD granted leave to appeal to IAT

Country of origin	Basis of Claim (Refugee Convention/ECHR)	Initial Decision	Appeal outcome (IAA/AIT)	Post-appeal outcome (IAT/CA/further reps)	Status Granted/Final outcome
Nigeria	PSG Article 3	Refused	Dismissed	Dismissed ⁵³	RFD
Romania	PSG + imputed political opinion Article 2, 3	Refused Refused	N/A HP granted ⁵⁴	N/A	HP (3 years)
Romania	PSG	Refused	N/A	N/A	ONG ⁵⁵
Romania	Articles 2 & 3 PSG	Refused	N/A	N/A	ONG ⁵⁶
Romania	PSG	Refused	N/A ⁵⁷	N/A	RFD
Romania	Articles 2 & 3 PSG	Refused	N/A	N/A	RFD ⁵⁸

⁵³ Applicant refused leave to appeal to IAT. Has since left the project.

⁵⁴ Claim was refused and an appeal against the decision lodged. Prior to appeal however the HO granted HP for 3 years on discretionary basis.

⁵⁵ Solicitor making further representations on human rights grounds

⁵⁶ Solicitor making further representations on human rights grounds

⁵⁷ Applicant absconded prior to appeal

Country of origin	Basis of Claim (Refugee Convention/ECHR)	Initial Decision	Appeal outcome (IAA/AIT)	Post-appeal outcome (IAT/CA/further reps)	Status Granted/Final outcome
Russia	PSG Article 3	Refused	N/A	N/A	HP (3 years) ⁵⁹
Russia	PSG Articles 2 & 3	Refused	Dismissed ⁶⁰	N/A	RFD
Serbia & Montenegro	PSG	N/A	N/A	N/A	ABD ⁶¹
Sierra Leone	PSG Articles 3 & 8	Refused	Dismissed (RC) Allowed (HR)	N/A ⁶²	HP (3 years)
Sierra Leone	PSG Articles 3 & 8	Refused	Dismissed	IAT remitted appeal to IAA ⁶³	HP ⁶⁴ (3 years)

⁵⁸ Applicant has absconded

⁵⁹ No record of appeal being lodged. Stage at which HP granted unclear.

⁶⁰ Asylum appeal was withdrawn. Human rights appeal dismissed. No application made to IAT.

⁶¹ Applicant withdrew claim before initial decision.

⁶² No application made for leave to appeal to IAT

Country of origin	Basis of Claim (Refugee Convention/ECHR)	Initial Decision	Appeal outcome (IAA/AIT)	Post-appeal outcome (IAT/CA/further reps)	Status Granted/Final outcome
Thailand	PSG	Refused	N/A ⁶⁵	N/A	RFD
Turkey	Political opinion Articles 3 & 8	Refused	Dismissed	Dismissed ⁶⁶	ONG
Ukraine	PSG Articles 2, 3 & 8	Refused	Allowed	N/A	ILR as refugee
Ukraine	PSG	Refused	Allowed	N/A	ILR as refugee
Ukraine	Articles 2, 3 and 4 PSG	Refused Refused	Allowed	N/A	ILR as refugee
Ukraine	Articles 2, 3 5,8 Applied outside the Immigration Rules Articles 2, 3, 5, 8	N/A	N/A	N/A	UND ⁶⁷

⁶³ SSHD reconsidered decision prior to remitted IAA hearing

⁶⁴ Grant of HP received prior to second IAA hearing

⁶⁵ Applicant absconded after initial decision but before appeal

⁶⁶ Refused leave to appeal to IAT. Further representations to SSHD under consideration.

⁶⁷ No decision yet made

