



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-002620

First-tier Tribunal No: PA/54237/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 26<sup>th</sup> of March 2024**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**QL**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms H Foot of Counsel, instructed by BHT Sussex  
For the Respondent: Ms S Simbi, Senior Home Office Presenting Officer

**Heard remotely at Field House on 20 March 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. By the decision of the Upper Tribunal (Judge Sheridan) issued on 9.10.23, the appellant, a national of China, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Jepson)

dismissing her appeal against the respondent's decision of 22.9.22 to refuse her protection and human rights claims.

2. Following the helpful submission of the legal representatives, I reserved my decision to be given in writing, which I now do. The Upper Tribunal has also received and I have taken into account Ms Foot's skeleton argument, dated 13.3.24, as well as the respondent's skeleton argument dated 31.10.23.
3. The appellant, an accepted victim of trafficking and modern slavery, with a daughter born in 2022, claimed that her father had been kidnapped by loan sharks. The previous decision of the First-tier Tribunal (Judge Nightingale), promulgated 16.7.19, dismissed the appeal, finding that the appellant was not at risk on return from the loan sharks since there was insufficient expert evidence that family members of debtors were at risk being attacked. Judge Nightingale also doubted the appellant's claim that she had not been in contact with her family since leaving China in 2015. However, both the respondent and Judge Nightingale accepted that criminal gangs or loan sharks had attacked the appellant's father and blinded him in one eye.
4. The appellant's claim to be a victim of trafficking and potential victim of re-trafficking had not been considered by the Tribunal in 2019, hence this fresh claim, the refusal of which resulted in the decision now under appeal.
5. Judge Jepson accepted that if returning as a single mother, the appellant could not benefit from state protection or internal relocation to avoid the risk from loan sharks or trafficking gangs. However, the Tribunal found that she would not be at risk on return because she was in touch with her family and would therefore be returning with family support.
6. In summary, the grounds argue that the First-tier Tribunal erred in law by misapplying Devaseelan in application of the findings of the First-tier Tribunal in 2019 in the approach taken to the appellant's up-to-date evidence that she was not in contact with her family. It is submitted that this issue was fundamental to and determinative of the appeal.
7. In granting permission on all grounds, Judge Sheridan considered that, given that the kidnapping claim was unchallenged, it was arguable that the First-tier Tribunal Judge erred "by not addressing how the appellant's family would be able to assist/support her in circumstances where her father had been kidnapped. This is arguably material because (at [95] of the decision) the judge found that the availability of family assistance (not just family contact) was a central reason the appellant would not face a risk on return".
8. However, it was not being asserted that her father or other family members were no longer present because of being kidnapped and therefore not available to support the appellant on return. The grant of permission may have misunderstood the appellant's case, which was only that she has had no contact with her family since leaving China in 2015 and, therefore, would be returning as a single mother without family support.
9. Before Judge Jepson, the appellant maintained her claim that she was not in contact with her family. She relied on her own statements to that effect and her correspondence asking the Red Cross to reopen the tracing request. She also submitted that Judge Nightingale had misunderstood her evidence about having a baby brother born after she left China, claiming that the gender of the child she had given was merely her speculation and that in fact she knew only that her mother was pregnant when she last saw her, rather than the inference drawn that she had been informed of the birth by her family, which would suggest that she

was still in contact with them at a point after leaving China in 2015. Obviously, if she had been informed of the birth it undermined her claim to have had no contact since leaving China.

10. Before me, Ms Foot submitted that Judge Jepson should have recognised that there was fresh evidence not before Judge Nightingale, which required an independent assessment. Ms Foot asserted that Judge Jepson had “shut his eyes to the new post-dated evidence which was enough to find the appellant was not in contact with her family,” and thereby to depart from the findings of Judge Nightingale on this point. For this reason, Ms Foot submitted that the judge had misapplied Devaseelan.

11. In considering the judge’s approach to the evidence, I must bear in mind that in Volpi & Anor v Volpi [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] the judgment of Lord Justice Lewison, with whom Lord Justice Males and Lord Justice Snowden agreed, set out the following guidance:

*“(i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.*

*(ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.*

*(iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.*

*(iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.*

*(v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.*

*(vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.”*

12. In relation to the judge’s application of Devaseelan, the grounds attack the judge’s categorisation at [70] of the decision as an attempt to re-litigate the same point. Reliance is made on the passage of time, the up-to-date evidence of the Red Cross, and the appellant’s witness statements and oral evidence. It is argued that it was incumbent on Judge Jepson to consider the evidence afresh and that the judge failed to ask whether the appellant would be returning to China with her daughter and without family support but in error considered whether the further evidence was sufficient to displace the findings of the previous Tribunal.

13. In essence the 'new evidence' relied on by Ms Foot comprises the Red Cross emails, the appellant's allegedly consistent witness statements and oral evidence, and her explanation of a supposed misunderstanding of the evidence by Judge Nightingale as to the appellant's knowledge that her mother had given birth to a baby boy since the appellant left China.
14. Unarguably, the starting point was the previous clear and unambiguous finding that the appellant was in contact with her family after she arrived in the UK. That much was accepted by Ms Foot at the First-tier Tribunal appeal hearing.
15. Ms Foot submitted that the First-tier Tribunal failed to properly evaluate the Red Cross evidence as a whole. It was argued that the evidence was that the appellant's request was in a waiting list and that she had supplied documents and photographs to assist in the tracing effort. It is submitted that in combination with the appellant's consistent oral evidence, the Red Cross email strongly pointed to the conclusion that the case had been reopened. The point of this evidence was to support the claim that the appellant had not been in contact with her family despite efforts to make contact.
16. I have been directed to the emails at 156-158 of bundle C. It appears from this evidence that acting on the appellant's behalf, Melanie Webster emailed the Red Cross on 22.10.20 referencing contact earlier in the same year, stating that the appellant wanted to "try again with the tracing request" and asking for the appellant to be contacted with, ideally, a translator for the telephone call. The appellant was copied into the email. The same day response from the Red Cross Tracing Coordinator, Eve O'Hanlon, said that there would be no problem reopening the case but that there was such a high demand for the service that there was a waiting time for an appointment of up to 10-12 weeks. The email concluded with confirmation that the appellant had been put onto the waiting list and contact would be made as soon as she reached the top of the list. That was the end of the email correspondence put before the First-tier Tribunal in 2023. There is no evidence as to whether the tracing request was in fact reopened, or even whether the appellant ever had an appointment, or that there had been any further contact with the Red Cross beyond 2020. Frankly, the evidence was most unsatisfactory. One might reasonably expect if there had been further contact with the Red Cross it would have been adduced before the First-tier Tribunal or an explanation provided as to why it was not available.
17. At [28] of the decision, the judge summarised the appellant's evidence that attempts at communication failed, the Red Cross being provided (via an online process) with what was described as photographs and documents". However, it is not at all clear that the appellant submitted photographs and other documents in support of the reopening of this renewed tracing request, rather than such material being provided in some earlier attempt at contact.
18. At [69] of the impugned decision, the First-tier Tribunal Judge found that whilst the Red Cross had been contacted, it was "less clear" exactly who the appellant asked to be traced, or whether there was any result of the tracing request. The judge found that it was not clear that the request had ever been reopened. I am satisfied that those findings were entirely open to the judge on the very limited evidence. I am not persuaded that the conclusion on the Red Cross evidence was not open to Judge Jepson or that the finding was unreasonable or irrational. It cannot be said that no judge properly directed could have reached the same conclusion. The grounds on this point are little more than a disagreement.
19. At [70] of the decision, Judge Jepson recorded the submission that Judge Nightingale had "got the wrong impression" of the appellant's evidence and

noted the explanation provided as to the apparent inconsistency between the claim that there had been no family contact since leaving China and the appellant's statement that her mother had given birth to a baby boy after the appellant had left China. The judge was not bound to accept the rather contrived explanation for the inconsistency, namely that the appellant had speculated about the fact of the birth and the gender of the child. The judge was entitled to give short shrift to this attempt to go behind Judge Nightingale's finding.

20. Whilst the appellant has offered an explanation in which she suggests that her oral evidence was misunderstood, Judge Jepson has given cogent reasoning for rejecting that after-the-fact explanation. Similarly, as stated above, the conclusion on the Red Cross tracing request was also open to the judge on the evidence.
21. As the judge pointed out at [71] of the decision, merely because the appellant has been consistent does not make "a great deal of difference" when considered in the round.
22. I am satisfied that Judge Jepson was entitled to consider the self-serving submissions and 'new' evidence to be a re-litigation of the same point and found no reason to depart from the findings as to continued contact with family in China.
23. Contrary to the grounds, I am satisfied that Judge Jepson did consider all relevant evidence carefully and reached a conclusion open on that evidence. The judge should be taken at their word as stated at [53] of the decision that all of the evidence had been considered before findings were made. The judge specifically stated, "Without putting certain aspects of (the evidence) aside, I have sought to address that served since the last appeal here". Effectively, there was an independent assessment of the evidence. Whether the reasoning of the First-tier Tribunal is cast as there being insufficient to depart from the findings of the previous Tribunal, or as an independent assessment of the evidence, I am satisfied that on the particular facts of this case the outcome would inevitably have been the same.
24. For the reasons set out above, I am not persuaded that the finding of fact of the First-tier Tribunal was 'plainly wrong' or rationally insupportable, or that there was any error of law in the judge's approach to the application of Devaseelan to the present appeal.
25. In all the circumstances, no material error of law is disclosed in the making of the decision of the First-tier Tribunal and the appeal must, therefore, be dismissed.

### **Notice of Decision**

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order as to costs.

DMW Pickup

**DMW Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**20 March 2024**