



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

**Case No: UI-2022-003776**  
**First-tier Tribunal No:**  
**PA/53021/2021**  
**IA/07492/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 07 August 2024**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**XQA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms H Harris instructed by Migrant Legal Project.  
For the Respondent: Ms Rushforth, a Senior Home Office Presenting Officer.

**Heard at Cardiff Civil Justice Centre on 10 July 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant appeals with permission a decision of First-tier Tribunal Judge Matthews ('the Judge'), promulgated following a hearing at Columbus House in Newport on 14 January 2022, in which the Judge dismissed her appeal on protection grounds but allowed the appeal on Article 8 human rights grounds.
2. The Judge sets out the Appellant's immigration history between [2] - [5] of the determination in the following terms:

3. The appellant was granted a visa to the United Kingdom on the 28th of July 2009 as a student. She arrived on the 21st of August 2009. On the 3rd of July 2015 an enforcement team encountered the appellant when she was working at a restaurant in Bristol. On the 12th of August 2015 she was reported as an absconder and she was subsequently arrested in January 2017 by the West Midlands Police, in April 2018 she was reported to have an outstanding debt to the NHS and on the 6th of May 2018 she claimed asylum in the United Kingdom.
  4. On the 2nd of July 2018 she was referred to the National Referral Mechanism and on the 5th of July 2018 her claim that she was a potential victim of human trafficking was accepted. On that same date she was told that she was not entitled to leave to remain in the UK. She was refused asylum on the 2nd of April 2019 and appealed against that refusal. Her appeal was dismissed by Judge of the First-tier Tribunal Solly in a decision promulgated on 3rd September 2019.
  5. On the 26th of August 2019 she made a claim for discretionary leave as a victim of modern slavery on the 28th of August 2020 further submissions were lodged in that regard.
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3. That application was refused on 1 June 2021 and it was the appeal against that decision which came before the Judge.
  4. Having considered the written and documentary evidence the Judge sets out findings of fact from [23] of the decision under challenge.
  5. The Judge correctly took as the starting point in the appeal the previous determination of First-tier Tribunal Judge Solly, promulgated on 3 September 2019, in accordance with the Devaseelan principle.
  6. At [26] the Judge notes that many of the issues arising in the current appeal had previously been considered in the earlier determination but accepted that that was not binding upon the Judge for the reasons set out at [26 - 27].
  7. One new item of evidence which post-dated the earlier decision, considered by the Judge, is a psychiatric report of Dr Battersby dated 29 September 2021 which the Judge was able to consider together with the Appellant's medical notes. In relation to this evidence Judge writes:
    29. I note the time spent by the psychiatrist interviewing the appellant and the clear expertise of the psychiatrist concerned. I note the medical notes accompanying the appellant's evidence and of course her own evidence to me as to her mental health.
    30. I find the report to be cogent, properly argued by a person of relevant experience and that it reflects the appropriate guidance on the preparation of expert evidence. I except from the psychiatric report that the appellant has been diagnosed with moderate complex PTSD. I note in section 4 on page 24 of the report there are clear and logical reasons given for the appellant's limited ability to benefit from appropriate therapies recommended for someone of her condition. I accept that the appellant is in a stabilisation phase of treatment and that she will need trauma informed CBT or EMDR therapy as well as counselling. There are additional observations as to the future role of antidepressant medication for the appellant.
    31. It is also clear from the expert evidence that amongst the traumatic experiences that have befallen the appellant are the domestic violence and people trafficking referred to above and accepted as having occurred.
  8. The Appellant's claim she did not hold the required Hukou was considered by the Judge at [32 - 33]. It is noted this was a matter considered by Judge Solly and it found the evidence did not warrant making a finding any different from that previously made. The Judge was not satisfied the Appellant did not have access to Hukou documentation arising from her previous upbringing in China.
  9. The Judge notes at [34] the fact the Appellant was trafficked is accepted as is the fact that she was a victim of domestic violence, as was her son, perpetrated by her former partner, her son's father.

10. In relation to contact with her daughter, the Judge records the Appellants evidence that she had not seen her daughter since the child was six months of age and was returned to her paternal grandparents in China, and that only contact in the interim has been by video. At [36] the Judge finds Appellant's daughter lives with her father and paternal grandparents in China. The Judge also notes that the father was deported from the UK as a result of his convictions for child cruelty and domestic violence and accepted the Appellant's account of his hostility towards her. The Judge accepted the evidence that the child's father also wants their son to live with him.
11. At [37] the Judge accepted the Appellant has limited contact with her mother and that her parents who have now divorced live separately.
12. The Judge accepts the Appellant was a victim of trafficking by the Snakeheads although finds on the Appellant's own account she has had no recent contact in the United Kingdom from anyone connected with the Snakeheads. The Judge noted the Appellant had claimed several years ago her mother warned her that the Snakeheads were still returning to the family home in order to seek the whereabouts of the Appellant, but in the absence of more recent evidence of any interest demonstrated by the Snakeheads in the Appellant or her family the Judge was not persuaded that at the date of the decision there was any ongoing interest in her or her family from the Snakeheads [38 - 39].
13. The Judge considers the best interests of the Appellant's son between [40 - 44]. The child is said to be just about to turn 4 years of age and that he lives with and is raised solely by his mother. The Judge accepts the child has been the victim of cruelty from his father [41]. The Judge finds the best interests of the child are that he remains settled in the care of his mother and that, all other issues aside, would benefit from consistency rather than the risk of being involved in relocating from the United Kingdom to China [42].
14. Relation to the Appellant's own mental health the Judge writes:
  44. On the issue of her mental health she indicated that she was not currently taking any antidepressants and I find that to be the case. I note however the findings of Doctor Battersby. The appellant was acutely aware of cultural concepts of embarrassment at having to have any treatment for mental health conditions. The fact that she is struggling without medication does not persuade me that such medication would be of no assistance to her. I recognise immediately however that I have no evidence before me to suggest that appropriate antidepressant medication is not available in China.
15. In light of the above factual findings the Judge goes on to consider the Appellant's claimed need for international protection from [45].
16. The Judge notes the Appellant will be returned to China as an unmarried woman with two children beyond the single child policy and refers to the country guidance case of AX (family-planning scheme) China CG [2012] UKUT 97.
17. I note at this stage, although not referred to this part of the determination, that in 2015 Chinese officials announced that the programme known as the one child policy was ending and beginning in early 2016 all families will be allowed to have two children. On 26 June 2021 those restrictions were lifted, allowing Chinese couples to have any number of children from that date.
18. The Judge's finding at [49] that the Appellant had not established a real risk of treatment on the basis of the family-planning provisions is a finding within the range of those reasonably open to the Judge on the evidence.
19. In relation to the issue of trafficking, the Judge considered the country guidance case of HC & RC (Trafficked women) China CG [2009] UKAIT 00027 at [50]. For the reasons set out the Judge did not accept, in light of there being no evidence

- of ongoing interest from the Snakeheads, that there was any risk to the Appellant as a trafficked person [51].
20. In relation to risk from her current partner, the Judge finds in the event of return the Appellant is at risk if there is contact with him or if she takes steps to see her daughter or to allow her son to see his sister. The Judge finds on the basis of his previous conviction for violence against the Appellant and his son her partner will be somewhat hostile to the Appellant with a record of being violent to her [52].
  21. The Judge finds, however, there was inadequate evidence to show that the Appellant and her son could not relocate so that contact with her former partner is avoided, although accepting this would inhibit the frequency of nature of any contact between the Appellant and her daughter albeit that such contact has effectively ceased to present in any event [53].
  22. Drawing together the threads of the previous findings, at [56] finds the Appellant is not at risk of serious harm from any of the claim sources, under the guidance makes clear in principle that single women with children are able to return relocating China without adverse interest or ill-treatment from the authorities.
  23. In relation to medical issues, having considered the medical evidence, the Judge did not find the Appellant had provided sufficient evidence to show she would not receive appropriate treatment for any of her conditions in China.
  24. The Judge dismisses the asylum claim for these reasons at [57], the claim for Humanitarian Protection at [59] in line, before going on to consider the human rights claim from [60].
  25. Here, again, the Judge refers to the appellant's medical condition and to AM (Zimbabwe) [2020] UKSC 17 at [62]. The Judge repeats the finding that Article 3 is not engaged by any aspect of the Appellant's health condition.
  26. In relation to Article 8 ECHR, the Judge notes it was not suggested or submitted she could meet the Immigration Rules as a partner or parent and went on to consider whether there were very significant obstacles to her reintegration on return to her home area [64].
  27. In this respect the Judge refers to the report of Dr Battersby, the findings the Appellant is a victim of violence and trafficking, the fact her former partner has secured custody of their eight-year-old daughter, that it was found to be credible that you would try to seek custody of their son in accordance recorded cultural beliefs, and that the Appellant is a traumatised woman who has already been a victim of violence and who will be ill-equipped to resist him [69].
  28. At [70] - 74] the Judge writes:
    70. I accept that in the event of this appellant's return to any part of China daily life would be dominated with the need to protect her son from her former husband and that given her already fragile mental health she would, as the consultant concluded simply be unable to cope with the upheaval of relocating to China. Her son would be moving to an entirely alien environment never having been to China before, though his primary concern would simply be to be with his mother.
    71. The appellant would be inhibited in making any attempt to contact her daughter even by remote means because of the risk that her former partner would appreciate that she is now in China and would be able to seek her out. She can achieve remote contact safely with her daughter from the United Kingdom and can also thereby allow some video contact between siblings. Remaining in the UK in my judgement allows the principle of remote contact with her daughter in a way that could not be sensibly achieved in China.
    72. The appellant is presently settled in the United Kingdom in her presentation and is attending reviews in relation to her hepatitis. In the event of the upheaval of a relocation I am persuaded that because of the psychiatric stress for seen by Dr

Battersby she would not be able to cope with the otherwise routine regular reviews of her own health needs. The risks I find to this appellant upon relocation flow not from an ability to source appropriate resources in China but from an inadequacy of psychiatric reserve to cope with the change required. It perhaps also follows that given the upheaval of removal to China I am not persuaded that the appellant would be able to accept appropriate therapy for her post-traumatic stress disorder again this would be a reflection of her own poor mental health rather than the availability of such treatment.

73. These components together persuade me to find that notwithstanding this appellant's ability to have worked in the United Kingdom, and that she was born in China, she would face very significant obstacles in re-establishing herself upon return given the lack of support, her fragile health and her fear that her former partner would effectively be able to take his son from her care.
74. I find that paragraph 276 ADE is satisfied for the appellant, that finding also reflects a position I have found to be in the best interests of her son though that is not the determinative factor in isolation.
29. At [75] the Judge states "*for the reasons given above, I do find that the present decision is a disproportionate interference with the article 8 interests of the appellant*".
30. The Appellant sought permission to appeal, arguing the Judge erred in the application of the Refugee Convention to the facts as found by not considering whether the Appellant had a well-founded fear of her ex-partner, whether this amounted to a Convention reason, or from there to go on and consider whether internal relocation would be safe or unduly harsh.
31. The Grounds assert the Judge should have said whether in the context of the Refugee Convention the Appellant had made out a well-founded fear and is a woman with characteristics which would form a particular social group (PSG) in China.
32. The Grounds refer to an expert report dealing with the issue of internal relocation and its conclusion it will be very difficult for the Appellant to relocate.
33. Permission to appeal was granted by another judge of the First-tier Tribunal on 11 August 2022 the operative part of the grant being in the following terms:
2. The Judge considered RC (Trafficked women) China CG [2009] UKAIT 00027, however it is arguable that he omitted to consider the general risk posed to the appellant relocating to China as a single woman who had been trafficked.
  3. Permission is granted on all grounds.
34. The Secretary of State cross-appealed the human rights Article 8 decision which was refused by the same judge of the First-tier Tribunal on 11 August 2022, the operative part of that decision being in the following terms:
1. The judge does appear to have overlooked the NHS debt which precludes the appellant from meeting the suitability requirements, however I am not persuaded given the reasoning at [65-72] that this is material on the basis that the judge's reasoning would have resulted in the appeal being allowed on the basis of proportionality.
  2. Permission is refused on all grounds.

### Discussion and analysis

35. In assessing a claim for asylum, the first question a judge has to consider is whether any fear held by an appellant is genuinely held. It is clear that the Judge in this case finds that it is.
36. The second element is to consider whether that fear amounts to persecution.

37. To amount to persecution what is feared must be sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right or an accumulation of various measures including a violation of a Human Right which is “sufficiently severe” to affect an individual in the same way.
38. It is an accepted principle of Refugee law that past persecution can be taken as an indicator of future persecution. In this appeal the Judge accepts that if the Appellant comes into contact with her partner who is now in China, there is a real risk that she will suffer harm based upon her previous experiences of domestic violence at his hands. Such ill-treatment, if sufficient to satisfy the definition of persecution, will be by a non-state actor.
39. Even if persecution is made out it is then necessary to consider whether the feared persecution is for a Convention reason. The suggested Convention reason in this appeal is Membership of a Particular Social Group.
40. As the asylum claim was made prior to 28 June 2022 the Appellant would need to establish that she shares an innate characteristic, a common background that cannot be changed, or a characteristic so fundamental to her identity or conscience that she should not be forced to renounce it **or** that the group has a distinct identity in the relevant country because it is being perceived as being different by the surrounding society – see DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 (IAC).
41. Relevant to this question is the other issue considered, namely finding the Appellant is a victim of modern trafficking. As noted in skeleton argument filed by Ms Harris, the Secretary of State’s CPIN China: Modern Slavery, paragraph 2.3.1 states that victims of modern slavery women in China are a particular social group.
42. Finding an individual is a member of a Particular Social Group is, however, not sufficient to enable an appeal to be allowed. As noted in DH the next stage is for an individual to show that there is a real risk of persecution as a result of their being a member of the social group.
43. The finding of the Judge is that the Appellant had not established a real risk of being re-trafficked. That is a finding within a range of those reasonably open to the Judge on the evidence.
44. Ms Harris refers to the head note of HC and RC, a case considered by the Judge and the guidance in that case that where it can be established that a woman or a girl does face a real risk of being forced or coerced into prostitution by traffickers, the issue of whether she will be able to receive effective protection from the authorities will need careful consideration in the light of background evidence highlighting significant deficiencies in the system of protection for victims of trafficking.
45. A further part of that same paragraph, (2), is not highlighted in the skeleton argument but is just as important to the issue being considered. That is the guidance of the Upper Tribunal that “That each case, however, must be judged on its own facts”.
46. Therefore, even if the Appellant establishes a real risk of persecution for a Convention reason, or potential breach of Article 3 ECHR on the basis of a real risk of serious harm, the Judge was still required to consider whether there is a sufficiency of protection or internal relocation reasonably available to her on the evidence.
47. Although not before the Judge, I am aware of a recent ruling from the European Court of Justice (ECJ) which has concluded that women who experience or who are at risk of gender-based violence in their country of origin can be regarded as belonging to a “particular social group” and be granted refugee status.

48. The ruling was made as a consequence of a preliminary reference by Bulgaria in *WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* (C-621/21).
49. In that case a Turkish Muslim national of Kurdish ethnicity claimed that if she was returned to Turkey, she would be at risk of being forced to remarry or being the victim of an “honour killing”.
50. WS based her claim on a well-founded fear of being persecuted by non-state actors on account of her membership of a “particular social group” defined as being women who are victims of domestic violence, and women who are potential “honour killing” victims.
51. The Administrative Court in Sophia made reference to the ECJ for them to provide clarification on how to establish membership of a PSG in the context of asylum claims where gender-based violence and domestic violence are the basis, and in circumstances where a nonstate actor is committing the violence.
52. The conclusion of the ECJ was that refugee status was “to be granted in cases where a third country national is persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group”. The court ruled that “women, as a whole, may be regarded as belonging to a social group” and that in the event of certain conditions being met, refugee status should be granted. The court said, “this will be the case where, in their country of origin, they are exposed, on account of their gender, to physical or mental violence, including sexual violence and domestic violence”.
53. The ECJ also found in situations where the conditions for granting refugee status are not met, women “may qualify so for subsidiary protection status, in particular where they run a real risk of being killed or subjected to violence”. The court said this applied all the more strongly where there is a risk of such violence being “inflicted by a member of their family or community due to the alleged transgression of cultural, religious or traditional norms.”
54. It is accepted this judgement was handed down following the conclusion of the Brexit transition period which means it is not binding on the UK.
55. The judgement of the ECJ does not, arguably, identify a new Refugee Convention reason but rather identifies a specific group who may be entitled to the protection of the Convention on the basis of real risk arising from their gender and risk of persecution directly related to the same, from which the State is unable to provide a sufficiency of protection and from which there is no reasonable internal flight alternative.
56. Ms Harris submits that not only should the Judge have considered whether the Appellant was a member of a Particular Social Group, but having done so and having concluded that she is, should have gone on to consider whether there was a sufficiency of protection available to her from the authorities in China.
57. It is correct to note the Judge did not consider the issue of sufficiency of protection as the Judge did not specifically consider the point raised by Ms Harris. The reason for this arises from the schedule of issues the Judge was asked to consider. In the skeleton argument provided by the Migrant Legal Project dated 19 November 2021 those issues are stated to be:

#### Schedule of issues

8. The resolution of the following issues in the Appellant’s favour should result in a decision to allow this appeal.
  - i. Does the state offer sufficient protection to the Appellant against domestic abuse, child cruelty or abduction?
  - ii. Can the Appellant and her child avoid further harm from the Appellant’s ex partner by relocating to another province in China?

- iii. Will the Appellant's second child be able to obtain a hukou, and would the requirements themselves be persecutory?
- iv. Will the Appellant and her child be at risk of Article 3-level harm because of her history of exploitation, ill-health and breaches of family planning laws.

58. Claiming it was an obvious point that the Judge should have considered is contrary to the current practice in the First-tier Tribunal of identifying the relevant issues with the parties at the outset and then dealing with those in the determination. An issue-based approach.
59. A comparison of the skeleton argument setting out the issues the Judge was asked to consider and the determination shows that the Judge did precisely what they were invited to do. Thus, there was no suggestion in that skeleton argument that the Judge was asked to consider and make findings upon those issues which are now said to warrant a finding that the Judge had erred in law in not dealing with them. It is therefore not surprising that the issues in the schedule are precisely those the Judge focused on in the decision under challenge.
60. If the Judge had been asked to consider the Refugee Convention issue in the manner it is now suggested, and even if the Judge had found the Appellant satisfied the definition of a member of a Particular Social Group, the Judge was still required to consider the issue of internal relocation.
61. The Grounds challenge to Judge's findings in relation to the reasonableness of internal relocation, claiming the Judge did not consider the expert report of Elena Consiglio when concluding that internal relocation was both safe and not unduly harsh. It is claimed that the view of the expert was contrary to this finding.
62. At [26] of Ms Harris' skeleton argument it is written:
26. As per the conclusion of Elena Consiglio cited in the grounds of appeal [AB/115/§37], it was her professional opinion that it would be extremely difficult for the Appellant to relocate legally due to the difficulties to meet the requirements (employment and housing) to change the place of the hukou registration or to obtain a temporary residence permit in another location; to her being a single mother and Hepatitis B positive; to her history of human slavery and due to her prolonged absence from the Chinese job market without acquitting suitable qualifications to spend in China.
63. The test is not whether internal relocation will be extremely difficult but whether it will be unreasonable. I do not find it made out the Judge did not consider all the evidence, including this report, with the required degree of anxious scrutiny. Just because the Judge made a finding contrary to the view that the expert does not mean the Judge did not properly consider that document. The Judge's findings are adequately reasoned. The Judge took into account the claims made by the Appellant, the fact she is a single mother, her history, and submissions made regarding internal relocation.
64. Having sat back and considered this challenge with the required degree of anxious scrutiny, I come to the conclusion that the Appellant has not established that the Judge erred in law in a manner material to the decision to dismiss the protection claim, and to only have allowed the claim on the Article 8 ECHR grounds.

### **Notice of Decision**

65. The Judge has not been shown to have materially erred in law. The determination shall stand.



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**IA/07492/2021**

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**31 July 2024**