



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

**Case No: UI-2024-003093**  
On appeal from: PA/56148/2023  
LP/03135/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 13<sup>th</sup> November 2024**

**UPPER TRIBUNAL JUDGE GLEESON**  
**UPPER TRIBUNAL JUDGE HIRST**

**Between**

**L Y**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Stephen Vokes of Counsel, instructed by Spencer West LLP

For the Respondent: Mr Edward Terrell, a Senior Home Office Presenting Officer

**Heard at Field House on 23 September 2024**

**Order Regarding Anonymity**

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity, and is to be referred to in these proceedings by the initials L Y. 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**

### **Introduction**

1. The appellant challenges the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 28 August 2023 to refuse her international protection pursuant to the Refugee Convention or leave to remain on human rights grounds.
2. The appellant is a citizen of the People's Republic of China ('China'). Her nationality and identity are not disputed.
3. **Mode of hearing.** The hearing today took place face to face.
4. For the reasons set out in this decision, we have come to the conclusion that the appellant's appeal falls to be dismissed.

### **Procedural matters**

5. **Vulnerable appellant.** The appellant is a vulnerable person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance.

### **Background**

6. The main basis of the appellant's international protection case is that she is at risk on return because she supported the Dalai Lama group, which is illegal in China. The claimant had a tea shop in China and on her account, members of the Dalai Lama group would meet there. She would attend meetings, and (although her evidence was contradictory on this point) may have handed out leaflets. The appellant says that in 2020, the Chinese authorities issued an arrest warrant and came to both the tea shop and her family home, seeking to arrest her.
7. The respondent in her refusal letter dated 23 August 2023 did not accept the appellant's account of her Dalai Lama connection.
8. The appellant appealed to the First-tier Tribunal.

### **First-tier Tribunal decision**

9. At [10] of the First-tier Judge's decision, he recorded that both representatives had confirmed that the sole matter in issue was credibility: if her account of being a member of the Dalai Lama group, and of the arrest warrant, stood up then the appellant was entitled to refugee status.
10. Mr Ahmed, who appeared for the appellant below, accepted that there was no freestanding Article 3 ECHR medical claim. The First-tier Judge found that the medical evidence before him would not reach the *AM (Zimbabwe)/Paposhvili* threshold. Mr Ahmed also did not pursue Article 8

ECHR. The effect of those concessions is that only international protection under the Refugee Convention was in issue before the First-tier Tribunal.

11. The First-tier Judge dismissed the appeal principally because he found the appellant's evidence to be vague and contradictory, and was not satisfied that she was a credible witness. He held that the appellant's knowledge of the Dalai Lama group was extremely vague; that she left China openly on her own passport in her own identity; and that, even to the lower standard, her account did not establish a risk of persecution or serious harm in China if she were to be returned.
12. The parties have had the opportunity to listen to and agree a note of relevant cross-examination in the First-tier Tribunal. A listening appointment was arranged but the respondent did not send a representative to that appointment. The appellant did, and the note prepared by her representatives is before us.
13. The recording notes cover the whole hearing. It was agreed that the case centred on credibility and the appellant's involvement, if any, with the Dalai Lama group.
14. Mr Ahmed for the appellant raised the issue of the appellant being a vulnerable adult, stating that 'if there were stronger evidence of her vulnerability, it might justify her not giving evidence. However, the available medical evidence is not as good as [he] would have liked'.
15. The evidence produced was a series of letters from the Dover Counselling Centre between 14 March 2023 and 12 October 2023, which record that counselling was arranged and taken up. A mental health questionnaire was included in the letter of 29 June 2023, but we do not have the appellant's responses.
16. The only other mental health and/or vulnerability evidence was photographs of the packets of medication prescribed: Mirtazapine 15 mg and 30 mg (an antidepressant), Zopiclone 3.75 mg (a cyclopyrrolone, used to treat difficulty sleeping), Sertraline 50 mg (an anti-depressant) and Propranolol 10 mg (a beta blocker, used for various indications). The underlying prescriptions were not produced and it is not, therefore, clear which of these medications the appellant was taking at the date of hearing.
17. There was no medico-legal or psychiatric report to assist the First-tier Judge. The Judge acknowledged that the evidence showed that the appellant was on medication and that 'a sensible approach would be taken'. There is no record of any particular adjustment being sought or made to assist the appellant during the hearing.
18. The appellant in answer to cross-examination repeatedly said that she 'did not remember' or that she 'forgot'. She had not seen the arrest warrant but 'people said there was one'. The appellant and her children had been living with her parents before she left China. Her children were still there.

She could not say when she had last contacted them. She also had relatives in the UK. Her evidence on any threats to her, or contact with the police, was internally contradictory.

19. Mr Ahmed, who represented the appellant, is recorded as having made submissions as follows:

“...Asks to consider that the appellant is on medication for mental health. Submits she did run a tea shop where the group met and that something is preventing her from returning to China, possibly related to her mental health. Why would she have a visit visa and not come back she has 2 children, she has something that is preventing her from going back. That something she has been trying but struggling to explain due to her mental health conditions. Suggests that inconsistencies do not necessarily indicate lying and that her distress during examination is due to mental health issues. States that you would have noticed while being examined that A was getting concerned, not because she is hiding something but because she does not want to think about it. ”

There is no suggestion in that submission that the appellant’s vulnerability had not been properly treated during the hearing.

20. At [1] and [10] in his decision the Judge referred to the appellant’s vulnerability in the following terms:

“1. I have treated the appellant as a vulnerable witness and I take note of the Presidential Guidance and the jurisprudence of *AM (Afghanistan)* [2017] EWCA Civ 1123. ...

10 ...The Appellant attended the hearing and gave evidence which was subjected to cross examination. Both representatives noted that the appellant had provided evidence that she was taking medication for anxiety and depression and agreed that she should be treated as a vulnerable witness. I am grateful to Ms Tomar [for the respondent] for the sensitive way in which she conducted the cross examination of the appellant. The cross examination of the appellant was not impugned by Mr Ahmed but I find the sake of completeness that he was quite correct not to do so.”

21. The First-tier Judge found the appellant’s evidence to lack credibility, even to the lower standard of proof applicable in international protection claims, and dismissed the appeal.
22. The appellant appealed to the Upper Tribunal.

### **Permission to appeal**

23. Mr Vokes settled grounds of appeal, although he did not appear below. Ground 1 argued that the First-tier Judge had :

“...[made] a misdirection of law as to material matters, in finding that the Appellant was a vulnerable witness but failing to have regard to the Presidential Guidance when assessing the weight of the vulnerability.”

24. In relation to ground 1, the grant of permission at [3] says this:

“3. Ground 1 is arguable. At [1] the Judge states that they have treated the Appellant as a vulnerable witness and taken note of the relevant guidance. At [10] the Judge records again that the Appellant should be treated as a vulnerable witness, and notes that she was taking medication for anxiety and depression. *It is arguable that the decision does not then record, in line with paragraph 15 of the Joint Presidential Guidance Note No 2 of 2010, the effect that the Tribunal considered the identified vulnerability had in assessing the evidence before it.* As the core issue was credibility, and the Judge found at [24] that the Appellant’s evidence was vague and contained “significant and irreconcilable consistencies [sic]”, it is arguable that this was a material error of law. Permission is granted in respect of this ground.”

*[Emphasis added]*

25. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

26. The oral and written submissions at the Upper Tribunal hearing are a matter of record and need not be set out in full here. We had access to all of the documents before the First-tier Tribunal as well as the listening note, the content of which is not disputed. We heard submissions from Mr Vokes and Mr Terrell, and reserved our decision, which we now give.

### **Discussion**

27. Mr Vokes challenged the First-tier Judge’s credibility finding as unsound because, he contends, the Judge failed properly to apply the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. We have set out above the Judge’s approach to that Guidance.

28. In contrast, Mr Ahmed, who appeared below, took no issue at the hearing on the application of the vulnerability guidance. On the contrary, he acknowledged that there was a paucity of medical evidence before the Tribunal. No adjustments were sought and no challenge made to the treatment of her vulnerability during the hearing.

29. The evidence of counselling being undertaken and medication for depression and other associated ailments being prescribed was not sufficient, in the absence of a medical report, to explain the inadequacy and vagueness of the appellant’s oral evidence during cross-examination or her ability to remember facts central to her account.

30. We remind ourselves that an appellate court may interfere with a First-tier Tribunal’s findings of fact and credibility only where they are ‘plainly wrong’ or ‘rationally insupportable’: see *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [2]-[5] in the judgment of Lord Justice Lewison, with whom Lord Justices Males and Snowden agreed. We note, particularly, the guidance at [2(iv)-(vi)] in *Volpi*:

“2. ...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.

31. The grounds of appeal in this appeal do not reach that high standard and are no more than a disagreement with conclusions which were unarguably open to the First-tier Judge for the reasons given in the decision.

32. This appeal is dismissed.

### **Notice of Decision**

33. For the foregoing reasons, our decision is as follows:

The making of the previous decision involved the making of no error on a point of law

We do not set aside the decision but order that it shall stand.

**Judith Gleeson**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 23 September 2024**