



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: UI-2023-003535  
FTT No: PA/00693/2022**

**THE IMMIGRATION ACTS**

**Decision and Reasons  
Promulgated  
On 24 September 2024**

**Before**

**Upper Tribunal Judge SHERIDAN  
Deputy Upper Tribunal Judge MANUELL**

**Between**

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

**and**

**Ms H G  
(ANONYMITY DIRECTION MADE)**

Respondent

**Heard at Field House on 13 September 2024**

**Representation:**

For the Appellant: Mr A Chakmajian, Counsel  
(instructed by the Anti-Trafficking and Labour Exploitation Unit)  
For the Respondent: Ms S Kumar, Senior Home Office Presenting  
Officer

**DECISION AND REASONS**

## *Introduction*

1. The Respondent appealed with permission granted by First-tier Tribunal Judge Galloway (as corrected by Upper Tribunal Judge McWilliam on 1 July 2024), against the decision of First-tier Tribunal Judge Buckwell who had dismissed the Appellant's international protection appeal and her Article 8 ECHR private life appeal. The decision and reasons was promulgated on 4 January 2023. For convenience the parties will be referred to in the remainder of this decision by their designations as in the First-tier Tribunal
2. The Appellant, a national of China, born on 12 December 1992, entered the United Kingdom on 21 September 2009 with a Tier 4 General Student Visa valid until 25 August 2010. On 23 September 2017, the Appellant was encountered during a Home Office enforcement visit. The Appellant claimed asylum following her detention on 3 October 2017. Her claim was refused on 31 October 2017 but she did not exercise her right of appeal. She remained in the United Kingdom without leave.
3. On 14 December 2019 further submissions were made on behalf of the Appellant. These were refused in the Respondent's decision dated 11 August 2022.
4. The Appellant's case was that as a young child, she lived with her parents in Shenzhen, China. Her father became indebted to loan sharks and was imprisoned when the Appellant was aged 5. The Appellant's mother struggled to service the debt and, after taking a further loan, sent the Appellant to the United Kingdom, using false documents. The Appellant arrived in the United Kingdom in September 2009, aged 16. The Applicant's mother had tried to keep up the loan repayments by prostituting herself. In the United Kingdom the Appellant had sought a loan from the United Kingdom branch of the loan sharks her mother had used in China. They subjected her to brutal violence and repeatedly raped her. She was forced to work as a prostitute under horrendous conditions, until she escaped. Subsequently the Appellant assisted the police with the investigation of her sex trafficking. She was referred into the NRM. She received a Positive Conclusive Grounds decision, from the NRM, confirming that she was a Victim of Trafficking.

5. The Appellant was initially represented in her fresh claim, first by one firm of solicitors and later by another firm. The second firm ceased to act for her after her claim was refused and she had no representation when her appeal came on for hearing before Judge Buckwell. He made enquiries from her and was told that her instructions had been refused by two other firms. He considered that the Appellant had had sufficient time to obtain representation, was fit to give evidence (“bright, intelligent and aware”), the appeal papers were available and so decided that the hearing should proceed. He recorded the assistance he gave to the Appellant at all stages and there has been no criticism of his general conduct of the hearing.
6. Judge Buckwell clarified with the Appellant that the only basis of her protection claim was her fear of snakeheads in China. Her claim was not based on her Christian conversion.
7. Judge Buckwell accepted that he should follow the decision of the NRM, so found that the Appellant was a victim of trafficking. He found that the Appellant’s physical suffering had been in the United Kingdom, not China, and that the persons responsible were not likely to pursue her to or find her in China. Her credibility was reduced because of her inadequately explained delay in making her asylum claim as now formulated. She was not at risk of being re-trafficked from China. Accordingly he dismissed the international protection appeal.
8. As to the Appellant’s private life claim under Article 8 ECHR, Judge Buckwell found that the Appellant was unable to show that she faced unjustifiably harsh consequences (i.e., very serious obstacles) re-integrating into China, so that paragraph 276ADE(1)(vi) of the Immigration Rules was not met. There were no exceptional circumstances sufficient for the appeal to be allowed outside the Immigration Rules. Her Article 8 ECHR appeal was therefore dismissed.

*Permission to appeal*

9. Permission to appeal was sought on behalf of the Appellant on five grounds, as follows:

Ground 1: Procedural irregularity/unfairness - refusal to adjourn;

Ground 2: Procedural irregularity/unfairness/Failure of Respondent to ensure Tribunal not misled;

Ground 3: Failure to consider, or properly consider, material evidence/failure to give reasons (ability to reintegrate - Article 8 ECHR);

Ground 4: Failure to give reasons - credibility, vulnerability and risk of re-trafficking; and

Ground 5: Failure to consider material evidence/give adequate reasons (section 8 credibility).

10. Judge Galloway granted permission to appeal in the following terms:

“Firstly, it is arguable that the Judge failed to consider all the evidence in the round (including the Appellant’s vulnerability) when assessing the reasons for the delay in claiming asylum and whether or not section 8 of the 2004 Act applied on the facts. Secondly, it is arguable that the judge incorrectly took section 8 as the starting point for credibility rather than taking the evidence as a whole. Taking all this into account I consider there to be arguable material errors of law and permit permission to appeal on all grounds.”

11. Notice under rule 24 dated 9 September 2024 was belatedly served by the Respondent, opposing the appeal, with the exception of Ground 3 relating to the Appellant’s Article 8 ECHR private life claim:

“6. The SSHD concedes Ground 3; a mere reference to the Appellant’s retained knowledge of China, culture and the language is arguably inadequate to meet the Kamara v SSHD [2016] EWCA Civ 813 ‘enough of an insider’ test.”

The Tribunal decided that it wished to hear argument before accepting any such concession.

*Submissions - Appellant*

12. Mr Chakmajian for the Appellant referred the Tribunal to the Appellant's amended grounds and bundle.

13. *Ground 1*

Counsel submitted that it was not the Appellant's responsibility that Hestia's letter was filed the day before the hearing. The Appellant had a right to be represented and she had been deprived of that right. The Judge had been left unaware of the efforts which had been made on her behalf to obtain representation. The Judge had not taken into account the Appellant's vulnerability. It was impossible to say that having representation would have made no difference to her case. The Hestia letter should have been given to the Judge, not that the failure to do so was the Judge's fault. It was important that the Appellant's previous asylum claim had not mentioned trafficking. The decision was procedurally unfair and should be set aside and reheard.

14. *Ground 2*

Counsel submitted that the Judge's decision had been based on objective evidence for China which was outdated. (He wished to make it clear that it was not suggested that the presenting officer had acted deceitfully.) The reasons for refusal letter had been based on the 2018 CPIN, but that CPIN had been withdrawn on 7 December 2022, as the Home Office website showed. The later CPIN should have been the Judge's point of reference and the decision was unsafe.

15. *Ground 3*

Counsel submitted that the Respondent's concession should be accepted by the Tribunal because the Judge's consideration of paragraph 276ADE(1)(vi) of the Immigration Rules was manifestly defective. When assessing the Appellant's prospects of reintegration at [85], the Judge had failed to consider how she would reintegrate in light of her circumstances. There was no reference to the facts that the Appellant was (a) a recovering victim of horrific trafficking and repeated, brutal, sexual violence in captivity; (b) a vulnerable person; (c) trafficked from China in 2009, when she was a child; (d) without experience of life in China as an independent

adult; (e) no longer in contact with her family in China; (f) without ties to her home area, or any other support network in the country.

16. *Ground 4*

Counsel submitted that the Judge had failed to take account of the Appellant's vulnerability when assessing her evidence. The relevant Joint Presidential Guidance Note, No.2 of 2013, in relation to credibility and vulnerability, had not been followed. The relationship between credibility and vulnerability had not been assessed. No adequate reasons had been given as to why the Applicant's vulnerability was not capable of rebutting challenges to credibility. Moreover, there was a failure to consider the risk of re-trafficking (by the original traffickers or others) in light of the vulnerabilities identified in Ground 3 above, and against the background of poverty in China.

17. *Ground 5*

Counsel submitted that when finding that the Appellant's credibility had been damaged by delay in making her claim (section 8), he had failed to reconcile this with the fact that it was accepted that she was indeed a victim of trafficking, regardless of delay. This incorrect approach vitiated the Judge's adverse credibility findings.

*Submissions - Respondent*

18. Ms Kumar for the Respondent relied on the rule 24 notice. The Respondent's concession as to the Judge's assessment of the Article 8 ECHR private life claim stood, but the refusal decision was not conceded. Otherwise the appeal was opposed.

19. As to Ground 1, it had not been shown how the Hestia letter would have changed the Judge's decision to hear the appeal. The Hestia letter did not show when or how a representative would become available. There were no details of when contact with the firms listed had been made. The Judge had ascertained that the Appellant was aware of her case and how to put it. The hearing had been fair and the First-tier Tribunal's overriding objective had been applied.

20. Ground 2 had no substance. The Appellant was represented at the time she lodged her appeal. She had had the opportunity to raise her case. She was represented until August 2022, and it was up to her to provide up to date evidence demonstrating that the information regarding the Ministry of Public Security in China had subsequently changed. This evidence was not produced, neither was it raised as an issue in the grounds of appeal challenging the refusal decision.
21. Ground 3 was conceded.
22. Ground 4 was misconceived. The Judge's decision shows that he had taken the Appellant's vulnerability into account. He made repeated reference to what she had suffered. She had been given every opportunity to participate fully in her appeal hearing. The Judge rejected that the Appellant had demonstrated a link between the traffickers in the United Kingdom and those in China [81]. Contrary to what was argued, this was supported by adequate reasons which included the Appellant's confident live evidence and the additional documents provided. In the absence of ongoing threats to the family, the Judge was entitled to find there was no risk of re-trafficking.
23. Ground 5 was clearly unfounded considering the reasons given by the Judge at [79] to [80], which were reasonably open for a reasonable tribunal on the same evidence to make.
24. In reply, Mr Chakmajian reiterated that the Appellant had not been given a proper opportunity to find a representative. That could have changed the outcome of her appeal. The new China CPIN had a bearing on state protection (not available) and the capacity of traffickers to locate victims and re-traffick them. It was important for the Appellant's Article 8 ECHR claim that she had no family in China. The Appellant's vulnerability had not been factored into the credibility assessment, which was an error of law. The Judge's approach to delay in making the asylum claim based on trafficking was wrong. The appeal should be reheard with fresh evidence if necessary.

*Discussion and decision*

25. The Tribunal reserved its decision which now follows.

26. Ground 1

Mr Chakmajian mounted a strenuous attack on the decision, which in our view failed to reflect the difficult situation with which the experienced Judge was confronted. All judges prefer to have representation on both sides, which tends to enable focus on the live issues, making the judicial task less arduous. Thus it cannot be doubted that Judge Buckwell's preference would have been for the Appellant to have a representative, particularly in view of her personal history. But that was only one consideration in the exercise of his discretion. Here it was the fact that the Appellant had already been refused asylum in 2017, a decision which she had not appealed. Her evidence was that she had chosen not to raise the trafficking element of her claim, so the substance of her fear of return was confined to the snakeheads. She had therefore had a number of years to obtain any legal advice which she wished to receive about the pursuit of her fresh claim, as well as any evidence she wished to submit. It was not a situation, contrary to Mr Chakmajian submissions, where the Appellant had been faced with having to find a representative at very short notice. It had been her choice to advance a fresh claim.

27. Mr Chakmajian's submission that the Appellant had a "right" to a representative overstated the case by a considerable margin. Whilst it may be thought a worthy ambition, there is no absolute right to representation before the First-tier Tribunal, whether at common law, by statute, under Article 6 ECHR or the First-tier Tribunal's procedure rules. There is rather a right to have a reasonable opportunity to seek representation and a duty on the First-tier Tribunal to ensure that it assists unrepresented appellants to receive a fair hearing.

28. Given that the Appellant's previous representatives had ceased in succession to act for her, it can only have appeared to the Judge that the Appellant was unlikely to be able to find a new representative within any reasonable period, if indeed at all. Nevertheless the Judge gave the matter close consideration and he recorded the enquiries he properly made of the Appellant and her response.



29. Mr Chakmajian made much of the Hestia letter dated 15 December 2022, the day prior to the appeal hearing, suggesting that it showed that the Appellant had made genuine efforts to find representation, such that had the Judge been shown the letter, he might have granted an adjournment. We record here that the Judge was unaware of the letter before the hearing, through inadvertent administrative error on the part of the First-tier Tribunal staff. In all fairness to the overworked staff, filing a letter at the last moment is contrary to the over-riding objective of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and an obvious recipe for problems. There was no explanation as to why the Appellant had no copy of the letter to hand in.
30. Had the Judge been shown the Hestia letter, in our view it would have fortified him in his decision to proceed. He stated no doubt on his part that the Appellant had genuinely tried to find a new representative. Hestia's letter describes the well-known problem of finding representation. The letter lists the contact made with some 18 different specialist practitioners, several of them known for accepting seemingly unpromising cases. Not a single one was prepared to act for the Appellant. There was no suggestion that any willing representative was likely to be found within any timescale compliant with the First-tier Tribunal's over-riding objective.
31. Moreover, it is plain from the decision (see [21] to [25]) that Judge Buckwell's consideration of whether it was fair and just to proceed without a representative for the Appellant extended to the question of whether her case could in fact be put forward by her fairly. The Judge noted that the case had been prepared. There was a witness statement. He considered that the Appellant was intelligent and able to communicate. An interpreter was on hand. As a tribunal judge, Judge Buckwell was familiar with assisting unrepresented litigants, as indeed his subsequent effective conduct of the proceedings amply demonstrates.
32. Accordingly we find that there is nothing in Ground 1. There was no procedural unfairness and no material error of law has been shown.

*Ground 2*

33. This ground asserts procedural unfairness of a different kind, in short submitting that the Home Office misled the Judge by relying on outdated country background evidence which had been withdrawn. It is clear that 2018 CPIN for China had been replaced as outdated on 7 December 2022. Nevertheless, Judge Buckwell's decision did not turn on any point based on the 2018 CPIN. No submissions based on the country background evidence were recorded as made. We consider that Ground 2 is specious.

*Ground 3*

34. Having reflected, and with some hesitation given the obvious care with which the Judge's decision was prepared and the accuracy with which the law was stated, we find that this ground only has substance. It is not clear from the Judge's Article 8 ECHR decision with reference to paragraph 276ADE (1)(vi) of the Immigration Rules whether the Judge had reached sufficient findings about the situation in China to which the Appellant would return. For example, there was no express finding as to the location of the Appellant's parents or other relatives or whether the Appellant retained any other contacts of potential value. It had been submitted by the Respondent that it was not plain whether or not the Appellant's parents were in China. The Judge had accepted that the Appellant had been badly affected by her past experiences. She had left China while still young. Nevertheless, her prospects on return required more detailed attention, in our view, notwithstanding the finding that she was found not at risk of re-trafficking and was aware and intelligent. We will address the consequences of our finding below.

*Ground 4*

35. As to Ground 4, we find that the Judge sufficiently demonstrated his awareness of the Appellant's vulnerability, not only in the conduct of the hearing, but also in his assessment of her evidence. He accepted that she had suffered very badly. He protected the Appellant with an anonymity order. His adverse credibility findings were properly reasoned.

*Ground 5*

36. We find that this ground lacks substance. There was a glaring delay between the first asylum claim and then between the first and second claim. The Judge explored the reasons advanced for the delay, as required by statute. As he explained, it was a factor in the credibility assessment but not the only factor.

*Remaking the Article 8 ECHR decision*

37. Our decision to set aside the Judge's decision in part only means that the dismissal of her international protection claim stands unchanged. We consider, however, the remaking of her Article 8 ECHR private life claim will require further findings of fact. Although those findings may not necessarily be extensive, it is appropriate for these to be made in the First-tier Tribunal, to which the Article 8 ECHR appeal is remitted. We emphasise that if the Appellant wishes to raise any new matters she will have two options, (a) to obtain the consent of the Secretary of State or (b) to withdraw her Article 8 ECHR appeal and to make a fresh claim.

**DECISION**

The appeal is allowed in part only. The decision dismissing the appeal under Article 8 ECHR is set aside. The decision dismissing the international protection appeal stands unchanged.

The Article 8 ECHR appeal is remitted to the First-tier Tribunal, to be heard by any judge except Judge Buckwell.

2024 **Signed R J Manuell**

**Dated** 20 September

**Deputy Upper Tribunal Judge Manuell**