



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Numbers: UI-2022-001708  
PA/00226/2020**

**THE IMMIGRATION ACTS**

**Decision Under Rule 34  
On the 28 November 2022**

**Decision & Reasons Promulgated  
On the 01 December 2022**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**XZ (PR CHINA)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**DECISION AND REASONS**

1. This decision is made without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Consequent to the respondent confirming that she does not contest the appeal before the Upper Tribunal, observing the importance of these proceedings to the appellant and being mindful of the overriding objective that requires the Tribunal to deal with cases fairly and justly, I am satisfied that it is just and fair to proceed to consider this matter under rule 34.
2. The appellant seeks leave to remain on international protection grounds. She was unrepresented before the First-tier Tribunal at the hearing held on 6 December 2021, though she had previously been represented.

3. At the hearing before the First-tier Tribunal, the respondent consented to consideration being given to the appellant's personal relationships and article 8 ECHR, at [41] of the decision.
4. By a decision dated 1 February 2022, Judge of the First-tier Tribunal Behan ('the Judge') dismissed the appellant's appeal on both international protection and human rights grounds.
5. The Judge issued an anonymity order, providing attendant reasons.
6. The appellant relies upon several grounds of appeal, running to six pages, drafted by legal representatives. Judge of the First-tier Tribunal Chowdhury granted permission to appeal by a decision dated 13 April 2022, observing as arguable the appellant's complaint that the Judge failed to treat her as a vulnerable person.
7. By means of a rule 24 response authored by Mr. C Avery, Senior Presenting Officer, dated 27 April 2022, the respondent confirmed:
  - '2. The respondent does not oppose the appellant's application for permission to appeal on the basis that there was evidence of the appellant's mental health issues and there were clearly important aspects of the case where the state of the evidence was unsatisfactory. Although there had already been some history of adjournments and the appellant had indicated a preference to proceed, in the circumstances it is accepted that in the interests of fairness, the judge at the First-tier Tribunal should have adjourned the hearing with appropriate directions to address these issues.
  3. The tribunal is invited to set the case down for a re-hearing.'
8. Having considered the First-tier Tribunal decision I am satisfied that the approach identified by the respondent is appropriate. I conclude that the only just and fair approach is to set aside the decision of the First-tier Tribunal in its entirety due to a failure to adequately consider whether the appellant is a vulnerable person.
9. Consequent to the identified failure, the only proper course is for the matter to be remitted to the First-tier Tribunal for consideration by any judge other than Judge Behan.

#### *Further steps*

10. I do not consider it appropriate for this Tribunal to issue specific case management directions on behalf of the First-tier Tribunal.
11. However, it is appropriate for this matter to be placed before the Resident Judge at Hatton Cross to consider the merits of a case management review

hearing being undertaken. With the appellant again being represented, a consolidation of documentary evidence may be appropriate. Consideration can be given to the utilisation of the Family Court Protocol, though I observe the appellant's child turned 18 earlier this year.

12. Consideration may also properly be given as to the scope and nature of the appeal before the First-tier Tribunal. The appellant's grounds of appeal, which are unhelpful in their drafting, suggest on page 4 of the document a reliance upon her partner's European Union rights. It is not clear that the respondent's consent at [41] of the decision to a new matter being considered extends as far as permitting reliance upon European Union rights.

### **Direction**

13. I make the following direction:

- 1) This matter is to be placed before the Resident Judge at the First-tier Tribunal, Hatton Cross, for consideration of further directions, if required.

### **Notice of Decision**

14. The decision of the First-tier Tribunal, dated 1 February 2022, involved the making of a material error of law and is set aside pursuant to section 12(2) (a) of the Tribunals, Courts and Enforcement Act 2007.
15. No findings of fact are preserved.
16. The hearing of the appeal is remitted to the First-tier Tribunal sitting at Hatton Cross, to be heard by any judge other than Judge Behan.
17. An anonymity order is confirmed.

Signed: D. O'Callaghan  
**Upper Tribunal Judge O'Callaghan**

Dated: 28 November 2022