



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

Appeal Number: AA/03130/2015

THE IMMIGRATION ACTS

Heard at Glasgow

On 3 November 2015

**Decision and Reasons
promulgated**

On 16 November 2015

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MEI ZHU HE

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D McGlashan, of McGlashan MacKay, Solicitors

For the Respondent: Mrs S Saddiq, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of China, born 15 October 1984. The respondent refused her asylum claim for reasons explained in a letter dated 6 February 2015. First-tier Tribunal Judge Lea dismissed her appeal by determination promulgated on 15 July 2015.
2. The grounds of appeal to the Upper Tribunal are as follows:

The FTTJ erred in law because:

- 1 She has not made a finding on whether she accepts or rejects the evidence of the appellant (*see paragraph 19 in her decision, middle paragraph on page 3 of her Statement and item 3 in Inventory of Productions*) that the authorities issued a Sterilisation Order. Even if the appellant cannot succeed on the basis that in *general (emphasis added)*, family planning policy in China is not persecutory (*per AX*), she is entitled to succeed *on the particular (emphasis added)* facts and circumstances in her case if her assertion that a Sterilisation Order was issued. At paragraph 27 in the decision, the FTTIJ states that the appellant had not "... *adequately...*" explained why the Order would not have been issued earlier but no reasons are given as to why the explanation that was given – that it was not issued until the child went to school – is not acceptable, apart from the absence of satisfactory evidence of this, although no reasons are given as to why the appellant should have been expected to tender such evidence. The item itself was lodged (or at least a certified translation) and no adverse comment is made by the FTTIJ as to its provenance. This was a critical piece of evidence on which no/inadequate findings have been made by the FTTIJ.
- 2 She has left out of account evidence she should have taken into account. In paragraph 35 she considers the submissions made to her on behalf of the appellant. First, a full transcript (not just a newspaper article) of the decision (*Qui Yun Chen v Holder*) of the USA Court of Appeals was lodged (*item 9 in IOP 2*); and second her complaint that the appellant's representative "... *did not explain exactly in what way AX was now outdated ...*" is *plainly wrong since she was referred to a schedule of relevant passages (she acknowledges this at paragraph 11(8))* many of which contain evidence of post AX breaches of Family Planning policy in Fujian Province, China. She has therefore erred in law if she has ignored this evidence.
3. Mr McGlashan said that the judge failed to appreciate that the case was not based on general risk of sterilisation, but on production of the actual sterilisation order made. I asked Mr McGlashan where this order was to be found. He referred to the appellant's inventory of productions No 1 in the First-tier Tribunal, page 8, "certified translation of sterilisation order" and page 9, "certified translation of financial penalty order". He was unable, however, to identify originals of these documents among the productions in the First-tier Tribunal. He was unable to demonstrate that such documents had ever been exhibited to the respondent. He submitted that they must have existed, but he could not say where they are.
4. The translations each say at the bottom of the page, "This is to certify that the above translation is a true and accurate translation of the original document attached." However, in neither case is any document attached. Pages 8 and 9 appear to be themselves originals, although they might be copies.

5. The determination says at paragraph 27:

“I noted the documentation ... purporting to be a sterilisation order and financial penalty order ... the appellant has however not adequately explained why the fine and sterilisation orders would not have been issued when her daughter was sent back to China in 2007. The Chinese authorities must clearly have been aware of this, given that they issued the documentation to allow her daughter to go to China. The appellant claim that it is because her partner’s parents tried to register her daughter at the school but has not provided any satisfactory evidence from her partner’s parents to suggest that this in fact happened, despite her clearly still being in touch with her partner’s parents (she obtained *hukou* documentation from them.) “
6. Mr McGlashan submitted that the appellant had given evidence of what she heard from her partner’s parents when the attempt was made to register the child, and that the judge had not explained why that evidence was not accepted.
7. On the second ground, Mr McGlashan submitted that the judge had failed to consider the evidence.
8. I noted that the appellant’s inventory 2 in the First-tier Tribunal comprises 16 items, running to 135 pages. All of this appears to be background information relating to family planning policy in China. Inventory 3 comprises 8 items of a similar nature, running to 23 pages. Inventory 4 contains another 22 items, running to 114 pages. I asked Mr McGlashan whether the judge had been provided with a schedule of references or synopsis of that material designed to explain which parts of those materials said anything significantly different from the materials before the Tribunal deciding AX (Family Planning Scheme) China CG [2012] 00097. Mr McGlashan said that there had been before the court not only a newspaper account but a full copy of the decision in *Qiu Yun Chen v Attorney General of the United States* (this appears to be item 8 of the second inventory) and that all the other materials were relevant to human rights abuses carried out under the family planning policy in China, which the judge ought to have considered. However, he was unable to point to any specification to support the submission (recorded at paragraph 35 of the determination) that the guidance had become “outdated by these developments”.
9. Mr McGlashan confirmed that he was aware that in a number of cases in the FtT and in the UT submissions have been made based on United States case law and on materials similar to those produced here, and that he was not aware of any tribunal or court declining to apply the generality of what was decided in AX.
10. Mrs Saddiq submitted that there was no deficiency at paragraph 27 of the determination. There was no absence of a finding. It was plain that the judge did not accept the documentation to be genuine. It was sensible to observe that if the Chinese authorities wished to act on the fact of the appellant having given birth to a child out of wedlock, they could have

done so in 2007 when, to the contrary, they had been prepared to issue documentation to enable the child's travel to China. The appellant insisted on her explanation that this came to light when an attempt was made to register her daughter at school, but that was not an assertion the judge was bound to accept. It was also sensible for the judge to observe that there could have been evidence directly from the source of this information, the parents of the appellant's partner, who had sent other documentary evidence. There was nothing wrong with these reasons. They also had to be seen in the context of the judge's findings from paragraphs 23 to 29, where she explains why for numerous good reasons she found the evidence from the appellant and her partner to be not credible or reliable. The judge's specific reasoning regarding the documentation disclosed no error, and this was emphasised by placing that particular conclusion in its overall context.

11. I did not need to hear from Mrs Saddiq on the second ground.
12. I reserved my determination.
13. The first ground does not show failure to make a finding. The judge plainly is not satisfied by the evidence that a sterilisation order was issued. She gives two reasons, both sensible. As the Presenting Officer submitted, this also has to be viewed in the context of the overall adverse credibility findings, of which no criticism is made.
14. A judge is of course entitled (indeed bound) not to treat country guidance as authoritative if there is different (usually later) evidence to show that it is not authoritative. That usually happens because the situation in the country has changed. There was, crucially, no such "schedule of relevant passages" as claimed in the grounds. There was only the filing of foreign case law and an undifferentiated mass of material, some predating and some after the country guidance case. There was no meaningful submission to resolve, because there was no attempt to identify material significantly different from that which had been before the tribunal in AX. That approach attempts to leave it to the tribunal to find the appellant's case. It is also unfair to the respondent, who is left at a similar disadvantage.
15. Neither of the grounds of appeal shows that the determination errs in point of law.
16. The determination shall stand.
17. No anonymity order has been requested or made.



Upper Tribunal Judge Macleman

13 November 2015