



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

Appeal Number: HU/16449/2017

THE IMMIGRATION ACTS

**Heard at Manchester
On 15th October 2019**

**Decision & Reasons Promulgated
On 29th October 2019**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

M G

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Timpson of Counsel instructed by AGI Solicitors

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of China born on 9th March 1981.
2. She entered the United Kingdom in September 2005 and claimed asylum which was refused. Thereafter a number of further submissions made on her behalf fell to be refused.
3. On 31st May 2017 she made a human rights application for leave to remain in the United Kingdom on the basis of her family and private life. That was refused by a decision of the respondent dated 19th November 2017. It was the decision of the respondent that neither she, nor her partner, nor indeed her children met the requirements of the Immigration Rules, nor

were there any exceptional circumstances which would render her return to China as disproportionate.

4. The appellant appealed against that decision, which appeal came before First-tier Tribunal Judge Durand on 17th December 2018. The Judge, for a number of reasons set out in the determination, found that the appellant lacked credibility to a significant extent. Her children were not qualifying children and her partner was also Chinese by citizenship.
5. It was the finding of the Judge that the appellant could return with her family to China and hence her appeal was dismissed.
6. The appellant seeks to challenge that decision on the ground that the Judge failed to acknowledge or give any weight to the Country Policy and Information Note of China and the Contravention of National Population and Family Planning Laws November 2018. It was contended that such an omission was material to determine whether or not it was reasonable or proportionate to return the children to China.
7. Leave was granted by the Upper Tribunal on the basis that it was arguable that the Judge failed to properly assess the best interests of the children and failed to take into account the potential difficulties which the children would face in integrating into China in the light of the said Policy and Information Note.
8. Thus the matter comes before me to determine that issue.
9. At the hearing the appellant was represented by Mr Timpson who had represented her at the hearing before the First-tier Tribunal. He produces the Country Policy and Information Note on China Version 3.0 dated November 2018 for my attention.
10. In preparation for the hearing before the First-tier Tribunal there was a bundle on behalf of the appellant of 435 folios. The bundle did not contain the Country Policy and Information Note.
11. I have read the handwritten notes of the Judge made at the time of the hearing on 17th December 2018. There was an issue about the disclosure of a particular document by the Home Office, which is documented. An adjournment was granted for that matter to be considered and resumed. This is not the Country policy Note.
12. In a very full note of the evidence no record has been made of the Country Policy and Information Note. Significantly there would seem to have been little that has been noted as to any arguments at the hearing concerning that policy.
13. Mr Timpson indicated that he raised the issue of the Country Policy and Information Note with the Judge at an early stage in the proceedings. He did not give the Judge a copy of that policy but gave an electronic link to enable the Judge to follow up the policy subsequently. It was his position

that in the submissions that were made at the hearing he did make reference to the Country Policy and Information Note.

14. The grounds of appeal stress the relevance and importance of the Country Policy and Information Note in China, contending that the appellant, having given birth to children outside the marriage and abroad, she and they would suffer adverse consequences on return to China such that the respondent's decision would be rendered disproportionate. Such difficulties which may flow from the policy would be that medical insurance may not be effective for having a child outside the law and that some hospitals may indeed turn the children away from treatment. Single mothers it is said must pay social compensation fees and all medical expenses associated with giving birth. There may be family planning fees difficulties in education and recognition.
15. A Judge in determining an appeal is often faced with many documents to consider. It seems to me that the burden must lie upon the parties to clarify the issues that are involved and to ensure that the Judge fully understands the relevance of any documents that are presented. The curiosity of this particular case, as I have indicated, is that there were a very large volume of documentation that was presented as an agreed bundle before the Judge and yet the document, which is now the subject of this appeal, was not within that bundle. Indeed it is perhaps surprising that if the significance of that document is as is now claimed to be high that it was not in the documents.
16. I have no doubt, having heard Mr Timpson, that he is truthful in his account that he invited the Judge to have regard to this particular Country Policy and Information Note. It was perhaps not the best place to introduce an important document as an extra document at the beginning of proceedings, particularly when, as was apparent there were other issues that were preliminary to the conduct of the appeal to be determined.
17. It is clear from the Judge's written note of proceedings that it was a full and detailed note as to what transpired at the hearing. There are detailed notes as to the evidence that was given and the questions asked in cross-examination. The submissions of both the Home Office Presenting Officer and of Mr Timpson were also set out in considerable detail.
18. Whilst the existence of the Country Policy and Information Note was mentioned to the Judge by Mr Timpson, it is far from clear to me that the significance of that policy note was made clear to the Judge. As I have indicated, no copy was in fact provided and the Judge was invited to read up on the report at a later stage. Such seems to me to be far from satisfactory in the course of presenting proper arguments for and on behalf of the appellant. The absence of a note of the policy being introduced in the Judge's note is a clear indication that its significance was not immediately apparent to the Judge.

19. Mr Timpson contends that he did make submissions on that document. Once again, whilst accepting that he may have done so, it is far from clear that the relevance of the Policy to the issues was made clear. I have no doubt that had those submissions seemed of particular relevance to the Judge, a record of those submissions would have been made.
20. It is fundamental to the fairness of the process that Judges are assisted in considering issues by the parties who underline the importance or otherwise of particular aspects of evidence.
21. Mr Timpson made a number of detailed submissions, which were noted by the Judge in the handwritten notes of the Record of Proceedings. Little if anything is recorded as to the policy which is now relied upon. I find it surprising that if the Judge made detailed notes on most matters, the Judge would have omitted to make note on this matter had its significance been clearly presented. The focus of the submissions, which seem to be recorded as arising out of the hearing, was the conduct of the appellant and her partner and the fact that the children were approaching the age to be considered as qualifying children. There is little in the notes to highlight particular concerns upon their return to China.
22. Once again, whilst accepting that Mr Timpson did indeed make mention of the policy in his submissions, the significance of what he had to say on that matter did not seem to have gone into the consciousness of the Judge otherwise, as I so find, the Judge would have recorded what was said in some detail.
23. Clearly were the Judge to have overlooked an important aspect of evidence, that could amount to an error of law providing that there was a materiality to that piece of evidence. The appellant was represented by Mr Timpson and the respondent was also represented at that time by Mr McBride the Home Office Presenting Officer. The Judge was entitled, in my consideration to expect the parties to highlight the relevant and important aspects for consideration. That this particular document was not in the bundle as prepared but was introduced by way of a “side wind” does not assist in the task. There was no skeleton argument provided. Thus the nature of the submissions made are those reflected in the Judge’s notes. It does not seem to me to be a matter capable of amounting to an error of law for the Judge to overlook a matter where little assistance or significance was attributed to it. Mr Timpson did not highlight its significance in such a way as to bring the issue clearly to the notice of the Judge. In that regard is perhaps a shortcoming that falls to the advocacy rather than to the judicial determination.
24. Mr Timpson indicates that he relied in particular upon paragraph 5.8.1 that reads as follows. The Telegraph reported in a 2016 article that:

“In the case of unmarried couples, it can be avoided if the mother and father of the child marry within 60 days of the birth. Alternatively, they must pay a penalty that can range from a few thousand to tens of thousands of pounds depending on where you live and how much

you earn. For a single woman with few connections, little money, and no support, just the process leading up to and after birth – not to mention the hardship of the actual labour can be painful.”

25. Noting first of all that this is a report of 2016 which is very far out of date and is directed essentially to women giving birth. The appellant has already given birth to her children in the United Kingdom and so the complications of health insurance and support for that process do not arise. The appellant, who was found to lack credibility in many ways, was found to be in a relationship with another who is also a Chinese citizen. Consideration of return to China was on the basis that she, he and the children would return. In those circumstances it is difficult to consider that she is a single woman. Mr Timpson relies upon the 60-day requirement for marrying within the birth. It seems to me to put an extraordinary narrow interpretation upon the policy, when it would be entirely open to the appellant and her partner to marry if that were to secure advantages in registration and health and education in China.
26. 5.10.3 is also relied upon quoting from a 2017 USSD Report. Again that passage seems to focus upon the birth planning policy rather than to look at the matter from the standpoint of support to a family where the children are already firmly established as part of that family.
27. I note for example in paragraph 2.4.16 that many children born of single or unmarried parents had been denied a household registration document (HUKOU) preventing them from accessing public services, medical treatment and education. However it is recorded that the government has stated that it is making it easier for illegitimate children to be registered. Certain figures were quoted in that paragraph on the 2010 national census. Whether the appellant and her partner are to remain unmarried or could marry, whether the policy that is now in place is more flexible or not is really not made entirely clear from the policy note. I note for example in 5.6.3 that in September 2018 The Daily China had reported that three departments responsible for implementing family planning policies had been removed from the new structure of the National Health Commission. These were departments that used to enforce family planning policies and such a removal has triggered the public conjecture that the government may be planning to scrap longstanding limits on the number of children its citizens can have.
28. It was noted in paragraph 38 of the determination that the appellant could be returned to China without difficulty. This is her home where she has spent the majority of her life. She and her partner speak the language and Judge found that they will face no very significant obstacles in returning to their country of origin. It was noted that the children spoke both English and Mandarin. They were both within the primary school sector and bilingual. It was found it reasonably likely that the appellant and her partner did have family ties in China. Given the deception of the appellant little weight was given to her assertion that she lacked such ties in China.

29. It is difficult, without detailed consideration, to assess what weight should indeed be given to the Country Policy and Information Note. In certain paragraphs the draconian policy of lack of benefits to a couple who contravene the earning policy would seem to be stressed. On other occasions there would seem to be a relaxation of such requirements. In general terms the policy seems to be focused more on the aspect of pregnancy and giving birth than it does to the situation of families where the children have already been born some time ago. Certain passages seem to suggest the difficulties with registration that would be faced by the appellant and her family whereas other passages would seem to indicate a more tolerant approach. It is indeed a document, which if relied upon at the hearing, should have been the subject of careful critique and legal argument as to its significance and event. I find little indication that such a comprehensive argument was made in respect of it. No doubt if it is contended that its contents makes a material difference to the outcome of return, that is a matter that can be raised with the respondent as a fresh claim.
30. The narrow issue before me is whether or not the Judge has erred in the approach or consideration of that document. Given that I find that its significance was not properly made clear to the Judge, I do not find that even, if it had been produced to the Judge, that the Judge was in error in failing to consider it. In any event given the internal inconsistencies or changes within the policy I do not find that it can reasonably be said that it would be material to the outcome of return in any event. In those circumstances the appeal before the Upper Tribunal is dismissed. The decision of the Judge shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed
2019

Date 26th October

Upper Tribunal Judge King TD