



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

Appeal Number: AA/03084/2013

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 24 September, 5 November and 11  
December 2014 and on 20 January 2015**

**Decision issued  
On 22 January 2015**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**XIAO FANG CHEN**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Winter, Advocate, instructed by Latta & Co, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

- 1) The appellant is a citizen of China. Her husband and their two minor daughters are dependants on her claim. She appeals against a determination by First-tier Tribunal Judge D'Ambrosio, promulgated on 2 December 2013, dismissing her appeal on all available grounds.

Error of law (24 September 2014 hearing).

- 2) Mr Winter's submissions on 24 September were based upon the grounds of the first permission application; the grounds of the second permission application; and the written argument in the appellant's supplementary bundle 2.
- 3) The main points in respect of the credibility assessment were these:
  - (i) error in placing reliance upon absence of evidence from the appellant's parents (paragraphs 38 - 40 of the determination).
  - (ii) finding it unlikely the police would seek to redetain the appellant, being inconsistent with background evidence (paragraph 38);
  - (iii) use of the word "likely", being the wrong standard of proof (paragraphs 39 - 40); and
  - (iv) looking at matters through western eyes, overlooking police deference to the Communist Party in China.
- 4) The submission was that these errors vitiated the adverse findings.
- 5) Although the grounds and the written argument (not prepared by Mr Winter) criticise the findings on internal flight, that point was not pursued, because at paragraph 60 the judge said that as no risk was established in her home area, it was unnecessary to consider it.
- 6) Apart from credibility, submissions were directed mainly against the judge's findings under the heading "the enforced abortion and sterilisation issues" at page 10 of the determination. There was said to be evidence about family planning enforcement post-dating and requiring conclusions other than those reached in AX (family planning scheme) China CG [2012] UKUT 97. The judge referred at paragraph 56 to item P of the appellant's supplementary bundle in the First-tier Tribunal. This is a background paper by the Refugee Review Tribunal of the Government of Australia of 8 March 2013. The judge says that this "mentions only one 2012 enforced abortion in Fujian Province". However, Mr Winter argued that read fairly the source is evidence of such practice on a wider scale. He said that there was further evidence before the judge of a significant increase in the use of coercive birth control measures:
  - first FtT bundle, item AE, Immigration and Refugee Board of Canada, report of 1 October 2012, at pp. 3, 5 and 7;
  - supplementary FtT bundle item M, report by China Aid Association (USA), 9 June 2013; and

supplementary FtT bundle item R, US Congressional-Executive Commission on China, 9 October 2013.

- 7) There were other grounds of appeal to the UT, but they were not pressed. I found them to be of no substance, and did not need to hear from the respondent in reply.
- 8) Mrs O'Brien said that she accepted that the findings on the risk of forcible use of an IUD and on an increased rate of enforcement were inadequately supported, and that in absence of findings on internal relocation the determination would have to be revisited.
- 9) I indicated that I was not persuaded that there is any error of law in the credibility findings. Read fairly and as a whole, the judge applied the correct standard of proof overall, did not take corroboration to be a legal requirement, and gave adequate reasons for reaching his conclusions. Those grounds of appeal amount to no more than insistence and disagreement on the facts.
- 10) It should in principle have been possible to complete the hearing, but both parties sought more time to address whether the background evidence goes substantially beyond that which was before the Tribunal in AX, and the internal relocation issue. There was also a question of time available on 24 September 2014, there being other cases to be heard. The case was adjourned until 5 November.

Submissions for appellant on remaking the decision (5 November hearing).

- 11) The birth certificate having been accepted, it was common ground that the appellant has a third child born on 5 February 2014.
- 12) Mr Winter said that Appendix A to AX listed the documents before the Tribunal in chronological order up to November 2011. The appellant's primary case was based on risk on her return to her home area, Fujian Province. AX at paragraphs 62-64 set out the regulations in Fujian Province, which showed that citizens returning from overseas were also governed by the regulations. The appellant did not fall into any class where she would be entitled to have further children. Both she and her husband have siblings. This raised an issue of the appellant already having had a third child, which would not be permitted under the regulations.
- 13) An expert country opinion by Christoph Bluth dated 21 October 2014 is item 3, pages 5-24 of the appellant's supplementary index bundle 4. Paragraph 5.3.5 confirms that regulations apply to Chinese nationals where children overseas and then return.

- 14) Paragraph 5.3.6 of the report states that enforcement of the policy may include regular pregnancy checks, insertion of IUDs, sterilisation, signing of contracts and fines for failing to submit to such procedures.
- 15) The next reference was to Item 19 of the appellant's index bundle in the First-tier Tribunal. The respondent's Operational Guidance Note for China issued on 29 August 2012 at 3.10.9 which lists Fujian as one of 10 provinces which "require unspecified remedial measures to deal with out of plan pregnancies." It was acknowledged that the appellant is not now pregnant, but this was said to give a flavour of the strict approach adopted in Fujian. It was acknowledged that the source cited in turn is a COIS report predating AX.
- 16) Item 31 of the same bundle, pages AE 1-11 is a report by the Immigration and Refugee Board of China of 1 October 2012. This was said to cover dates going beyond the material in AX. Attention was drawn to the overview at page 1 for the opinion, the lack of firm statistics on enforcement of family planning policy in Fujian is "due in parts to treatment of the issue as a state secret by the authorities, as well as the lack of free press ... and the imprisonment of activists ..." This was said to be a point not given any prominence in AX. Paragraph 2.2.2 of the report states that social compensation fees for additional children in Fujian are up to 4-6 times average local annual income for a second additional child and much more heavy for subsequent children.
- 17) In index supplementary bundle Item M is the report from the China Aid Association (USA) dated 9 June 2013. This relates mainly to Guang Dong rather than Fujian Province but there are indications that campaigns for fitting of IUDs or sterilisation are in place also in Fujian. (I noticed one feature of this report which does not seem to appear elsewhere or to have been mentioned in AX, namely that such campaigns rely not only upon threats and punishments but also upon financial rewards for compliance.)
- 18) Item R of the same bundle as a US Congressional Executive Commission on China report dated 9 October 2013 which states on the first page that officials continue to coerce compliance with population planning targets using methods including heavy fines, forced abortions and forced sterilisations. Fujian is one of the provinces mentioned for the use of harsh and invasive measures. Supplementary index bundle 4, Item 7 is another report by the US Congressional Executive Commission on China dated 8 October 2014. It contains the same paragraphs regarding Fujian.
- 19) Mr Winter here referred to the expert report at 5.3.6 mentioned above, which he said amounted to new information not before the Tribunal in AX.
- 20) The report at 5.3.8 refers to a decision of the US Court of Appeals for the Seventh Circuit dated 9 May 2013 accepting evidence that "forced sterilisation is mandatory for violators of the One Child Policy in Fujian Province, except for general exceptions that are not applicable to the

appellant” and on which the court pointed out that despite China’s repeated assertions to the contrary, there is an abundance of evidence that local officials particularly in Fujian routinely violate the policy against sterilisation. At 5.3.13 the report states “subjective evidence shows continued efforts to enforce abortions and sterilisations in many areas ... including the appellant’s *Hukou* area in Fujian ... to which she would be returned.”

- 21) Mr Winter submitted that the above evidence was of a nature which had not been before the Tribunal in AX, or at least was not assessed in AX, and it was all to the effect that the province from which the appellant originates is one of particular risk. If that was accepted, the question became whether there was an internal relocation alternative. As to general principles on internal relocation Mr Winter referred to *AH and Others* (Sudan) v SSHD [2008] 1 AC and to the general discussion in *MacDonald’s Immigration Law and Practice* 8<sup>th</sup> ed., paragraphs 1245 to 1246. He said that there were 2 matters which established that internal relocation would be unreasonable in this case.
- 22) The first derived from index bundle 4, item 5, a report from Freedom House dated 13 January 2014:

In some locales, family planning officials take advantage of the “neighbourhood crime watch” mechanism encouraging neighbours to snitch on each other to ensure that birth permit applicants are not secretly hiding unregistered children in violation of the rules ...

In addition, local family planning authorities impose collective responsibility on work units at government affiliated places of employment ...

- 23) Mr Winter said that this was information of a nature not considered in AX. (I observed that the point did not go so much to the undue harshness of relocation as to whether risk extended nationwide.)
- 24) The second point on which Mr Winter relies derives from evidence of Professor Fu Hualing recorded at paragraph 107 of AX:

Returning asylum seekers would be investigated to establish how they had left China. That would involve establishing where they held their Hukou and checking whether there were any outstanding criminal charges against them. A one way travel document would be issued only when these checks were complete. On return, the person would be briefly detained and questioned at the border, to verify their identity, then fined and their travel documents confiscated, barring them from further travel for 3 years. If there were any outstanding criminal charges against them, they would be escorted back to that local authority; otherwise, the returnee would be allowed to proceed unless there was an instruction from high ranking officials or they were involved in a significant case, in which circumstances they would be escorted back to the area where the Hukou was held.

- 25) Mr Winter submitted that although this evidence was narrated in AX the issues to which it gave rise were not resolved. The evidence in this case suggested that the appellant would be questioned on return and would be flagged up as not having left with a valid exit visa. I queried whether she might not reasonably be expected to return on her own passport rather than on an emergency document. Mr Winter said that even if she did so she would be flagged up on return as not having held an exit visa. This prompted reference to the evidence on the circumstances under which the appellant left China. It transpires that according to her screening interview at 2.4 she left China legally in the first place for Bolivia.
- 26) There was no time for further submissions on 5 November. It was agreed that the Secretary of State would provide submissions in writing within 14 days and that if any further response was required from the appellant that would be made within a further 14 days. No written directions were to be issued, the parties having noted the position. The case would then be listed for a further hearing on 11 December 2014, although the parties did not require to be represented unless they thought necessary.
- 27) The 11 December hearing did not take place because I was not available, and the case was relisted for 20 January 2015, when neither side wished to add anything orally.

Submissions for respondent on remaking the decision (written).

- 28) The expert report is no foundation for displacing the findings in AX. The expert goes beyond the proper sphere of expertise by assessing the credibility of the wider account, whereas her claimed involvement in Falun Gong has not been accepted. The report speculates about involuntary return and its consequences. The section on forced contraception at 5.3 rehearses evidence which was before the panel in AX. The post AX evidence is of limited instances of abuse or rogue actions. The mainstay of the report is an American court judgement which seems to contradict AX but with little detail of what information was taken into account or why it might apply to other cases. The expert report takes the appellant no further.
- 29) The “updating” evidence for the appellant flags up instances of coercive measures in the appellant’s claimed province of origin but is insufficient to undo AX. It does not suggest wholesale change since 2011. The panel in AX was aware of similar instances of forced abortions and sterilisations. Evidence of a carrot and stick approach of financial sanctions and rewards is not evidence of breach of Article 3.
- 30) Even if the appellant did show risk of fitting of an IUD or similar outcome in her home province internal relocation is available, applying AX at paragraph 191. There is no reason in this case to expect targeted pursuit outside the Hukou area.

Further submissions for appellant (written).

- 31) Paragraphs 3 to 14 deal again with risk in the home area. The evidence on the need for certification of insertion of an IUD is emphasised. It is submitted that AX was generalised in its guidance and did not look specifically at separate provinces in detail.
- 32) Paragraphs 15 to 18 submit again that internal flight would be unduly harsh. On identification as a failed asylum seeker, paragraph 18 submits that a one way travel document would be issued and internal relocation would be made redundant as she would be returned to her home area in terms of the country information.
- 33) In response to the respondent's submissions, the appellant at paragraphs 19 to 26 focuses her case on a worsening situation and a general risk in Fujian, and relies upon the argument on internal relocation as one which was not before the panel in AX.

Conclusions.

- 34) AX at paragraph 191(14) and headnote 14:

***Internal relocation***

*(14) Where a real risk exists in the 'hukou' area, it may be possible to avoid the risk by moving to a city. Millions of Chinese internal migrants, male and female, live and work in cities where they do not hold an 'urban hukou'. Internal migrant women are required to stay in touch with their 'hukou' area and either return for tri-monthly pregnancy tests or else send back test results. The country evidence does not indicate a real risk of effective pursuit of internal migrant women leading to forcible family planning actions, sterilisation or termination, taking place in their city of migration. Therefore, internal relocation will, in almost all cases, avert the risk in the hukou area. However, internal relocation may not be safe where there is credible evidence of individual pursuit of the returnee or her family, outside the 'hukou' area. Whether it is unduly harsh to expect an individual returnee and her family to relocate in this way will be a question of fact in each case.*

- 35) Mr Winter relied on two points on internal relocation. The first was the Freedom House report. That is a single source, without evidence of how widespread snitching is. It does not show that away from her home area the appellant would be generally vulnerable as a result of snitching, even if there is anything about her which might interest neighbourhood authorities. Nor is there anything to show that collective responsibility of work units might come to bear on her situation. The second point was the evidence at paragraph 107 of AX said to have been overlooked in its conclusions. However, in this case it is the appellant's evidence (rather overlooked in the submissions on her behalf) that she left China legally, on her own passport, travelling firstly to Bolivia. There is no reason to think that she cannot return to China on her own passport if and when she

chooses, or to think that she might encounter difficulties for having left illegally without proper documentation or without an exit visa. (The same appears to apply to her husband.) This case does not justify a finding of a real risk of being forcibly returned to the appellant's hukou area. There is no evidence of a real risk of effective pursuit elsewhere. There is no undue harshness in the appellant and her family relocating in China as millions of others have done. On the internal relocation issue alone, the appeal must fail.

- 36) The FtT Judge directed himself about the law on internal relocation at paragraphs 29 -31 but at paragraph 60 found that as no real risk was proved in her home area it was unnecessary to consider the matter. A conclusion on the alternative would have avoided lengthy further procedure.
- 37) Inhumane enforcement of family planning policy continues to happen, and to be under-reported. The risk varies from place to place and time to time, and may be more common in Fujian than in other provinces. However, it has not been shown that the evidence from 2012 to 2014 demonstrates differences of a nature and scale from the evidence which was before the panel in AX so as to displace the general conclusions in that case. I do not find it established that there is a general risk of persecution for violation of family planning policy in Fujian Province. In any event, for the reasons above the case fails on internal relocation.
- 38) In summary: the findings in the First-tier Tribunal determination on credibility and on Article 8 have not been shown to err in law, and are to stand. The determination in so far as it dismissed the appeal on Refugee Convention grounds is set aside. In remaking the decision, the appellant fails to establish risk on return to her home area, and her claim in any event fails because internal relocation is available and would not be unduly harsh. The effect is that the appeal, as originally brought to the First-tier Tribunal, is **dismissed** on all available grounds.
- 39) No anonymity order has been requested or made.



21 January 2015  
Judge of the Upper Tribunal