



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

Appeal Numbers: IA/50320/2013
IA/50326/2013
IA/50335/2013
IA/50344/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 30 May 2014**

**Decision & Reasons Promulgated
On 9 March 2015**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

T Z

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R J Y Z

P Z Z

(ANONYMITY ORDER MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Miss J Fisher, Counsel, instructed Alsters Kelley Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellants. Breach of this order can be punished as a contempt of court. I make this order because the appeals concern children who are Chinese nationals and raise questions about how they would be treated in China because their parents are not married to each other and because they are part of a family unit including two children. I see no public interest in

identifying the children. Their parents cannot be named in order to preserve the children's privacy.

2. The appellants are nationals of China. They appealed to the First-tier Tribunal a decision of the respondent to remove them from the United Kingdom having refused them leave to remain.
3. The first appellant was born on February 1970 and so is now about 45 years old. The second appellant was born in 1977 and so is now 37 years old. She is the first appellant's female partner. The third and fourth appellants are their minor children. They were both born in the United Kingdom. The third appellant was born in December 2005 and so is now 9 years old and the fourth appellant was born in June 2012 and so is now 2½ years old.
4. There is some disagreement about exactly when the first two appellants entered the United Kingdom and in what capacity but it seems clear that the second appellant had a visitor's visa valid from 10 January 2002 until July 2002 and that the first and second appellants applied for work permit visas on 27 October 2014. The applications were refused and they chose to remain in the United Kingdom without permission. They made no attempt to regularise their stay until 3 April 2013 when they made the application leading to the refusals that are the subject of this appeal.
5. The First-tier Tribunal dismissed the appeal and it is appropriate to look carefully at the First-tier Tribunal's determination.
6. Although the notice of appeal lists four grounds I turn to the skeleton argument relied on before the First-tier Tribunal (not prepared by Miss Fisher) to see how the case was put. Essentially it was maintained that the decision was a disproportionate interference with the private and family lives of each of the appellants and that the third appellant's appeal should have been allowed under the Rules, particularly 276ADE(1)(iv) of HC 395.
7. There is reference at paragraph 2 of the skeleton argument to "Article 3 ECHR rights" but the grounds for permission to appeal to the Upper Tribunal make it plain at paragraph 5 that Article 3 was raised "as part of the argument in relation to Article 8".
8. The First-tier Tribunal's findings begin at paragraph 9. The First-tier Tribunal decided that the first two appellants had left China at about the same time separately but intending to make a life together in the United Kingdom. The second appellant's parents did not approve of the first appellant and wanted her to marry someone else.
9. The third appellant was conceived after the first appellant had been refused a work permit. The first appellant admitted that they did not want to apply to regulate their status in the United Kingdom until they had a child who had accrued seven years residence. The First-tier Tribunal rejected the contention that the second appellant's pregnancies were other than planned and desired.
10. The first two appellants started to attend an Anglican church near to their home in 2004. The first appellant worked irregularly in a factory, on a farm and in a takeaway food shop. He was last employed full-time in 2010. He now makes money petty trading, buying items from second hand shops and reselling them at

car boot sales. Sometimes he distributes leaflets for the take away food industry. He has become a community governor of a primary school. Apparently he was nominated by a vicar. Both the first and second appellants have hosted annual Chinese New Year events in local schools.

11. The second appellant has done some factory work but does not work now.
12. They live in a house provided by their vicar who currently lives in Malaysia. They have lived there since 2009. They pay a rent of about £70 a week. I assume this is considerably below the market value.
13. Findings about the third appellant may be particularly important and I set them out below:

“16. The third appellant was born in the UK and has been here for more than seven years. She has never been to China. Her school report tells me that she is doing well in her studies. (AB 89); Whilst this report states that she speaks Chinese (presume Mandarin) the first and second appellants state that she does not and this must be an assumption by the school. They have always conversed with her in English up as they want her to be brought up as a British child. I do not accept the explanation that the report mentions Chinese just because the school assumed she spoke the language. I accept that the third appellant does not have a fluent understanding of any Chinese languages but it would be reasonable to conclude that she does speak or understand some Chinese language as her mother could not speak English when she first arrived in the UK and so she must have spoken to her in some other language.

17. The letter from solicitors (AB-1) states that RJYZ has *little interest in their (her parents) background having no understanding of its relevance to her and no understanding of Chinese culture and language and there is no interest shown in this by her. Although initially her parents did try and kept information flowing to her, she now only becomes stressed and adamant that this is of no relevance to her.* At the hearing the second appellant said that they did not speak Mandarin to her and they wanted the children to grow up speaking English. When asked what they had told her about China, she said she explained how lucky she was to have been born here and how bad things were for children in China. Her parents are involved in promoting Chinese culture in school and so I find it likely that RJYZ has some understanding of Chinese culture. Her mother has also told her about the difficulties children face there and how lucky she is to be brought up in England.”

14. The First-tier Tribunal asked itself, having referred to paragraph 276ADE(1) of HC 395, if “It would not be reasonable to expect the applicant to leave the UK”.
15. The Tribunal found that the third appellant had some understanding of the Chinese language and Chinese customs. She is also a “model pupil and is a member of the school council”. There were no behavioural or health concerns raised.
16. The third appellant was then 8 years old and the First-tier Tribunal Judge found that her best interests lay in her staying with her parents who had brought her up. The judge particularly referred to **Azimi-Moayed and Others (Decisions affecting children; onward appeals) [2013] UKUT 197 (IAC)** Blake J where the Tribunal revised the existing case law about the best interests of children and particularly said at paragraph 23:

- “(iii) lengthy residence in a country other than the state of origin can lead to development of social, cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reasons to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period;
- (iv) apart from the terms of published policies and rules, the Tribunal notes that seven years from aged 4 is likely to be more significant to a child than the first seven years of life. Very young children are focused on their parents rather than their peers and are adaptable;”.
17. The First-tier Tribunal then found that it was in the best interests of the third appellant to be brought up with her parents who loved and cared for her and she could expect to receive a good education in China. Clearly there would be disruption in removing but the Tribunal found that she could be expected to learn the language and progress in her education and integrate into life there and concluded “I do not find that it would be unreasonable for this to be in China”.
18. The First-tier Tribunal found that it would not be contrary to Article 3 rights to remove the family and there would be no ill-treatment akin to persecution because the first two appellants were not married and no risk of persecution if the appellants continued their links with Christianity.
19. The appeal was dismissed.
20. Permission to appeal was given primarily because it was arguable that the First-tier Tribunal:
- “did not make any clear findings as to whether the decision was in the best interests of the children taking into account the age of the child and the fact that she was born in the UK and has lived [there] for her entire life. This should have been done first. This is an arguable material error of law.”
21. The Secretary of State served a reply pursuant to Rule 24 of the Procedure Rules. Paragraph 3 is apt. The Secretary of State said:
- “The ground on which the appellants have been given permission amounts to a mere disagreement. The weight which the Judge placed on factors surrounding the best interests of the appellant RJYZ, were a matter for the judge. An alleged failure to place sufficient weight on particular aspects, cannot establish a material error in law. She has properly considered the interests of the children, in particular RJYZ who has been in the country for over seven years, and has come to the conclusion that her interests lie in continuing to reside with her parents, and that her interests can continue to be met by their returning to China”. This was a conclusion she was entitled to arrive considering the facts and the applying the case law.”
22. The bundle before me included an unreported decision of Upper Tribunal Judge Grubb promulgated on 11 December 2013. It was not suggested it was authoritative. It was produced as being illustrative of an approach to take in a case involving someone from China.
23. There were elements of carelessness in the determination that Judge Grubb considered but his decision is relevant to this appeal at paragraph 17 where he said:

“I agree with Mr Manley that the judge was required to grapple with the evidence relied upon which showed that the penalties were high for a married couple but were double for a single woman such as the appellant. Mr Manley pointed to a document at page 12 of the bundle which, although dealing with another province, namely Wuhan, stated that women who have children out of wedlock could be fined more than £17,000. In addition the document at page 6 to which I have already made reference states that ‘illegal’ child (which of course covers the appellant's child born out of wedlock) is denied all government services including access to schools, hospitals, etc. Mr Manley accosted that the appellant could not succeed under Article 3 of the ECHR but that the judge had failed properly to consider these matters in determining whether Art 8 would be breached.”

24. With respect to Judge Grubb, this decision does not bind me but it might be thought a particularly pithy explanation of what this appeal is really all about.
25. I begin by looking at the material before the First-tier Tribunal.
26. The Country of Origin Information Report dated 20 December 2013 refers to “provinces and localities imposed fines of various amounts on unwed mothers”. The same report at paragraph 10.14 says how national law authorises penalties for violators of the “one child policy” denying public health and education benefits to children beyond the first child and explains how this had led to concerns about forced contraception, sterilisation and abortion.
27. The report refers to information published by the BBC in May 2011 that twenty babies were said to have been seized under the one child per family policy and made available for international adoption. There was clear evidence that Shanghai Province extracted penalties described as “social maintenance fees” for extra children. The penalties were at a high level and failure to pay them prevented the unofficial child getting household registration which gave access to citizenship benefits. There is an extract from a BBC News Asia Report dated 17 January 2014. This includes the assertion: “As many as 20,000,000 boys and girls were born in violation of the original policy. Their families face large fines and the children are denied basic rights.”
28. The same point is developed in an article “Living in China” which says how “illegal” children or children who travel to an area without permission can find themselves unable to attend school. A further article in BBC News dated 17 January 2014 tells a story of a family who have had to pay a fine of almost \$10,000 and that across China \$3.3 bn in similar fines have been paid.
29. The reference to some 20,000,000 children is, I find, relevant in two rather different ways. It clearly shows that there are proper reasons to be concerned about returning people with more than one child because there will be additional difficulties but it is also plain that there are difficulties which a very large number of people are willing to overcome. It is conceivable that a person might be able to show that the difficulties of returning would be a very weighty factor in an Article 8 balancing exercise but this is not a case where the appellants have gone to the trouble of laying the evidential foundation. Maybe if they had given a very detailed explanation about where they would have to reside in China or why that was a place where they would be without funds and expected to pay large bills there might be something to say but this was not that kind of case.

30. Neither do I understand concerns based on the fact that the mother is not married to the father in this case. They exist as a family unit in the United Kingdom. I have every reason to think they would want to exist as a family unit in China and I have been pointed to nothing to indicate that they would not be allowed to live together as a family unit in China. The circumstances are quite different from those of a woman who allows herself to conceive (or is forced to conceive by the criminal act of another) when she is in no position to look to the father for help in bringing up the child.
31. Further it is a feature of the case that the appellants have identified themselves with the Anglican Church and want to keep in contact with Christians. I do not think even in this secular age I need specific evidence to say that the Christian church encourages marriage. There is no reason suggested before me why these people cannot marry or why they would not do that to facilitate the best interests of their children.
32. The First-tier Tribunal Judge clearly had in mind the guidance given in **AX (Family planning scheme) China CG [2012] UKUT 00097 (IAC)** which clearly established that returning children in the circumstances described would not normally amount to persecution. I accept that is not the same test as relevant to an Article 8 balancing exercise but in the absence of evidence that the third appellant and in due course her sister would not be able to get any kind of education or even social acceptance in china I do not see how the First-tier Tribunal Judge's conclusion that removal is proportionality and reasonable in all the circumstances could be said to be wrong in law.
33. I appreciate that the appellants' solicitors have gone to considerable trouble in preparing a detailed bundle and, with the benefit of hindsight, it may be more helpful if the First-tier Tribunal Judge had said a little more about the material before him. There has probably never been a determination written which could not have been improved and I am not suggesting that the First-tier Tribunal Judge erred and certainly not erred in law in the way suggested but I do not wish to discourage anyone from giving proper and careful consideration to a case wherein the child has to be removed.
34. I see no merit in the suggestion that there was something wrong about the order in which the First-tier Tribunal Judge went about her task.
35. Judge Kaler clearly recognised that the correct starting point is in considering the welfare and best interests of the children (this is what is meant by paragraph 22 of the determination where she reminded herself of the head note in **EA (Article 8 – best interests of a child) Nigeria [2011] UKUT 315**) which confirmed that, in the absence of a contra indication, it is in the best interests of small children to be with their parents. Her findings on this point are set out under the heading "Conclusions" and I cannot see how she can be said to have erred materially or at all.
36. It really comes down to this. The appellants have no right be in the United Kingdom or to expect be allowed to remain there unless removal interferes disproportionately with the private and family lives. This is reflected but not necessarily wholly embraced by paragraph 276ADE of HC 395. The oldest minor appellant has the strongest case here because, like all of the children, she is innocent of their parent's disregard for immigration control. The First-tier


Tribunal Judge considered the evidence and particularly reminded herself that “illegal children” have difficulties in China. Having considered all the evidence she found that the minor appellants had not shown that their removal was unreasonable. Rather she found it proportionate and she dismissed the appeals.

37. The appellants have failed to satisfy me that the First-tier Tribunal erred in law. Putting everything together I find that no error of law has been established. I therefore dismiss the appellants’ appeals.

Notice of Decision

The appeal is dismissed and I make no cost order.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 6 March 2015