Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10557/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Sent**
On 24 June 2013	**On 28 June 2013**

Before
UPPER TRIBUNAL JUDGE JORDAN

Between

Shou Hong Lin

Appellant

and

The Secretary Of State For The Home Department

Respondent

Representation:
For the Appellant: No appearance
For the Respondent: Mr P. Nath, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of China who was born on 7 August 1968. She appealed against the decision of the Secretary of State made on 7 November 2012 refusing her application for asylum and giving directions for her removal under paragraphs 8-10 of schedule 2 to the Immigration Act 1971.

2. The appellant claims to have entered the United Kingdom on 15 September 2012 but she avoided immigration controls. She claimed asylum on 9 October 2012. At the hearing before the judge on 8 February 2013, she had only been in the United Kingdom for six months.

3. The judge dismissed her appeal on asylum grounds, not having found the appellant credible on the central elements of the claim. He

concluded that he could not be satisfied, even to the lower standard of proof, that the Chinese authorities would perceive the appellant to be either a Buddhist or a supporter of the Dalai Lama or to be at risk on account of her religious or political opinions or, indeed, by reason of the authorities' perception of them.

4. The judge applied the reasoning in *AX (family planning scheme) China CG* [2012] UK UT00097 (IAC) in which it was found that, in general, for female returnees, there is no risk of forcible sterilisation or forcible termination in China and that, as a result of the one child policy, the appellant would not face treatment on return to China amounting to persecution.

5. However, in dealing with the appellant's Article 8 claim which, as I have said, could only have addressed a private and family life developed over a period of six months in the United Kingdom, the judge adopted the reasoning of paragraphs 47 to 61 of the refusal letter. In doing so, he adopted the approach of the Secretary of State by applying Appendix FM of the Immigration Rules as well as Rule 276ADE (iii) in which the Secretary of State asserted a requirement that a successful Article 8 claim required the appellant to establish she had been 20 years resident in the United Kingdom.

6. In granting permission to appeal, First-tier Tribunal Judge Frances, noting that the appellant had been unrepresented, referred to *MF (Article 8-new rules) Nigeria* [2012] UK UT393 (IAC) in which a 2-stage process was set out under which a judge was also required to consider the appellant's "pure" Article 8 claim as it arises under the Human Rights Act 1968 untrammelled, as it were, by what the Secretary of State imposed in the Immigration Rules.

7. Whilst, no doubt, the First-tier Tribunal judge in granting permission was correct to say that it was the duty of the judge to consider Article 8 in its broadest sense, this was a case where there was very little additional material before the Secretary of State or the judge which might, even arguably, require separate consideration. The appellant had only been in the United Kingdom, even on her own account, since 15 September 2012. At the time the decision was made by the Secretary of State, she neither had a child or a partner here. However, the respondent accepted that she was pregnant and that her baby was due within a few weeks. Not unreasonably, the Secretary of State took the view that the appellant could return with her newborn child and enjoy family life in China without any interference capable of engaging Article 8. If it did so, removal would be proportionate, given the findings that the appellant was not at risk of persecution by reason of the policies conducted by the Chinese authorities to reduce population.

8. The child had been born by the time her appeal was heard in the First-tier Tribunal. In his determination, the judge dealt with the appellant's

claim that she would return to China as an unmarried mother in paragraphs 175 to 190 and reached the sustainable conclusion that she and her child would not be subjected to persecution or serious harm by reason of having a child born in the United Kingdom out of wedlock. There was simply no other material before him capable of an arguable Article 8 claim.

9. On the material before him, the judge was bound to dismiss the appellant's Article 8 claim whether or not it was argued under the Immigration Rules or by way of the "pure" Article 8 claim as identified in *MF (Article 8-new rules) Nigeria* [2012] UK UT393 (IAC).

10. In the course of proceedings, the appellant through a friend, John K W Tse has made a series of applications for adjournments based upon her medical condition. The first application was successful although the Tribunal was not persuaded on the basis of the information in a hospital letter that there was satisfactory medical evidence sufficient to merit a delay of three or four months. Thus, by a decision made on 30 April 2013, the appeal was adjourned but re-listed for hearing on 24 June 2013.

11. A further application was made for an adjournment by Mr Tse which was received by the Tribunal on 20 May 2013. This was refused because no medical evidence had been produced to indicate that the appellant was unable to attend the hearing on 24 June 2013, notwithstanding a hospital appointment on 3 July 2013.

12. A further application was made to adjourn on 5 June 2013 seeking a further two months on the basis that the appellant's medical condition rendered her unfit to attend the hearing on 24 June 2013. This was refused, one again, because there was no evidence to indicate that the appellant was indeed unfit to attend the hearing on 24 June 2013.

13. A further application for an adjournment was made to me on 21 June 2013 on the basis that she was unable to find anybody to babysit for her on the hearing date and she was frail and unable to travel to London. I refused that application because the appellant had known the hearing date since 16 May 2013 and was well aware of the need to have childcare arrangements in place. I considered the earlier unsuccessful attempts for an adjournment which were refused on the basis that there was no adequate supporting medical evidence.

14. There is still none.

15. At the hearing on 24 June 2013, the appellant did not attend, nor did her friend Mr Tse. I resolved to proceed with the hearing of the appeal. My reason for doing so was largely related to the absence of any material to suggest that there was a viable Article 8 claim which could only be based upon the private life that the appellant has developed in

the United Kingdom since September 2012, no details of which have ever been provided. There is no viable Article 8 claim based upon a violation of appropriate respect for her family life because she will be returned to China with her child.

16. The Article 8 claim has always been hopeless given no material the appellant has been produced in support of it. As there is no viable claim to be at risk of harm, the appellant's removal to China is both justified and inevitable.

DECISION

The judge made no error on a point of law and the original determination of the appeal shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
26 June 2013