



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: AA/10128/2014  
AA/10129/2014

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 5 August 2015

Determination Promulgated  
On 11 August 2015

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

LW

HH

ANONYMITY DIRECTIONS MADE

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Moores (Sandbrook Solicitors)

For the Respondent: Ms Johnstone (Home Office Presenting Officer)

**DECISION AND REASONS**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity order. Unless the Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.*

1. The appellants are citizens of China. They have two minor children and have claimed asylum and it is therefore appropriate to maintain the anonymity directions of the First-tier Tribunal.

### Procedural history

2. In a decision promulgated on 28 January 2015 Judge De Haney dismissed the appellants' appeals on asylum and human rights grounds. The Judge comprehensively disbelieved each appellant's claim as to what happened to them in China.
3. In grounds seeking permission to appeal it was submitted that although the Judge directed himself to the relevant country guidance decision of **AX (Family planning scheme)** [2012] UKUT 00097 (IAC) and the relevant Operational Guidance Note on China (OGN), he failed to consider the consequences for the appellants if returned to China in light of the SSHD's acknowledgement that they have had two children, which is an apparent breach of the Chinese family planning scheme.
4. Permission to appeal was granted by Judge Kelly on the basis that it is arguable that there was a failure to carry out the assessment of risk on return by reason of the appellant's breach of the family planning scheme.
5. The matter now comes before me to determine whether or not the decision of the First-tier Tribunal contains a material error of law.

### Hearing

6. At the beginning of the hearing I made it clear to Ms Moores that I accepted the Judge had provided little reasoning for his conclusion that there would be no breach of the Refugee Convention or Articles 3 and 8 of the ECHR by reason of the apparent breach of the family planning scheme. However I pointed out that the Judge had made clear (and unappealed) findings that there is no credible reason to consider that either appellant is at individual risk or could not internally relocate. I indicated my preliminary view that the guidance in **AX** permitted of only one answer on the facts found in this case – the appellants are not at risk of persecution or Article 3 ill treatment by reason of any breach of the family planning scheme. I then invited Ms Moores to set out how the Judge's reasoning could be said to be deficient in these circumstances.
7. Ms Moores at first asked me to re-examine the Judge's credibility findings. I declined to do this on the basis that this was not the subject of any criticism in the grounds of appeal and it was simply too late to raise this on the day of the hearing. Ms Moores next asked me to find that as the second appellant had given birth to a second child she was at real risk of forced sterilisation. I directed Ms Moores attention to (11) of the head note in **AX**. This states that in general female returnees are not at risk of forcible sterilisation in China. Ms Moores pointed out that a possible exception applied in this case on the basis

that the appellant is from a rural area. Ms Moores was unable to take me to any evidence to support this proposition. Indeed the evidence available indicated a more liberal attitude to families having more than one child in rural areas. I asked Ms Moores to particularise the evidence to support the submission that one of the exceptions set out in (11) of AX applied. She however accepted that she was unable to take me to any such evidence and unable to support a submission that the second appellant would be returned to a 'hukou' area where there is a crackdown accompanied by forced sterilisation.

8. I also asked Ms Moores to address me on why, even if there was a risk to the second appellant in her 'hukou' area, she could not internally relocate as (14) of the headnote in AX indicates that "*internal relocation will, in almost all cases, avert the risk in the hukou area*". Ms Moores was only able to submit that the appellants have people looking for them and would not be able to safely relocate in China.
9. I then heard briefly from Ms Johnson, who simply relied on the SSHD's rule 24 notice, before reserving my decision, which I now provide with reasons.

### Country guidance

10. It is helpful to set out the country guidance summarised in the head note of AX in full.

#### **"Chinese family planning scheme:**

(1) In China, all state obligations and benefits depend on the area where a person holds their 'hukou', the name given to the Chinese household registration system. There are different provisions for those holding an 'urban hukou' or a 'rural hukou': in particular, partly because of the difficulties experienced historically by peasants in China, the family planning scheme is more relaxed for those with a 'rural hukou'.

(2) It is unhelpful (and a mistranslation of the Chinese term) to describe the Chinese family planning scheme as a 'one-child policy', given the current vast range of exceptions to the 'one couple, one child' principle. Special provision is made for 'double-single' couples, where both are only children supporting their parents and their grandparents. The number of children authorised for a married couple, ('authorised children') depends on the provincial regulations and the individual circumstances of the couple. Additional children are referred as 'unauthorised children'.

(3) The Chinese family planning scheme expects childbirth to occur within marriage. It encourages 'late' marriage and 'late' first births. 'Late' marriages are defined as age 25 (male) and 23 (female) and 'late' first births from age 24. A birth permit is not usually required for the first birth, but must be obtained before trying to become pregnant with any further children. The Chinese family planning scheme also originally included a requirement for four-year 'birth spacing'. With the passage of time, province after province has abandoned that requirement. Incorrect birth spacing, where this is still a requirement, results in a financial penalty.

(4) Breach of the Chinese family planning scheme is a civil matter, not a criminal matter.

### **Single-child families**

(5) Parents who restrict themselves to one child qualify for a “Certificate of Honour for Single-Child Parents” (SCP certificate), which entitles them to a range of enhanced benefits throughout their lives, from priority schooling, free medical treatment, longer maternity, paternity and honeymoon leave, priority access to housing and to retirement homes, and enhanced pension provision.

### **Multiple-child families**

(6) Any second child, even if authorised, entails the loss of the family's SCP certificate. Loss of a family's SCP results in loss of privileged access to schools, housing, pensions and free medical and contraceptive treatment. Education and medical treatment remain available but are no longer free.

(7) Where an unauthorised child is born, the family will encounter additional penalties. Workplace discipline for parents in employment is likely to include demotion or even loss of employment. In addition, a ‘social upbringing charge’ is payable (SUC), which is based on income, with a down payment of 50% and three years to pay the balance.

(8) There are hundreds of thousands of unauthorised children born every year. Family planning officials are not entitled to refuse to register unauthorised children and there is no real risk of a refusal to register a child. Payment for birth permits, for the registration of children, and the imposition of SUC charges for unauthorised births are a significant source of revenue for local family planning authorities. There is a tension between that profitability, and enforcement of the nationally imposed quota of births for the town, county and province, exceeding which can harm officials' careers.

(9) The financial consequences for a family of losing its SCP (for having more than one child) and/or of having SUC imposed (for having unauthorised children) and/or suffering disadvantages in terms of access to education, medical treatment, loss of employment, detriment to future employment etc will not, in general, reach the severity threshold to amount to persecution or serious harm or treatment in breach of Article 3.

(10) There are regular national campaigns to bring down the birth rates in provinces and local areas which have exceeded the permitted quota. Over-quota birth rates threaten the employment and future careers of birth control officials in those regions, and where there is a national campaign, can result in large scale unlawful crackdowns by local officials in a small number of provinces and areas. In such areas, during such large scale crackdowns, human rights abuses can and do occur, resulting in women, and sometimes men, being forcibly sterilised and pregnant women having their pregnancies forcibly terminated. The last such crackdown took place in spring 2010.

### **Risk factors**

(11) In general, for female returnees, there is no real risk of forcible sterilisation or forcible termination in China. However, if a female returnee who has already had her permitted quota of children is being returned at a time when there is a crackdown in her ‘hukou’ area, accompanied by unlawful practices such as

forced abortion or sterilisation, such a returnee would be at real risk of forcible sterilisation or, if she is pregnant at the time, of forcible termination of an unauthorised pregnancy. Outside of these times, such a female returnee may also be able to show an individual risk, notwithstanding the absence of a general risk, where there is credible evidence that she, or members of her family remaining in China, have been threatened with, or have suffered, serious adverse ill-treatment by reason of her breach of the family planning scheme.

(12) Where a female returnee is at real risk of forcible sterilisation or termination of pregnancy in her 'hukou' area, such risk is of persecution, serious harm and Article 3 ill-treatment. The respondent accepted that such risk would be by reason of a Refugee Convention reason, membership of a particular social group, 'women who gave birth in breach of China's family planning scheme'.

(13) Male returnees do not, in general, face a real risk of forcible sterilisation, whether in their 'hukou' area or elsewhere, given the very low rate of sterilisation of males overall, and the even lower rate of forcible sterilisation.

#### 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."

## Findings

11. I accept that that the Judge has not clearly addressed the consequences of the family planning scheme for these appellants upon return to China. The submissions before me focussed on the Judge's failure to 'spell out' why the appellant was not at risk of forcible sterilisation. I accept that the Judge could have provided much clearer reasons for his conclusion in this regard. The question before me is whether or not the Judge has provided sufficient reasoning for the appellants to understand why he reached his decision that the second appellant was not at risk and in any event could internally relocate [33]. The reasons need not be elaborate, and need not deal with every argument presented.
12. It is important to consider the decision as a whole and in light of the country guidance in **AX**. The Judge recorded in some detail the submissions of both representatives [15-19]. The submission made on behalf of the appellant was that the Judge should follow the OGN, which updated the position set out in **AX**. The reason that submission was made is obvious. There was simply

insufficient evidence to support a submission that there is a real risk of forced sterilisation for the second appellant as she does not fall into any of the exceptions to the general finding that female returnees who have already had their permitted quota of children face such a real risk. The Judge did not accept that the OGN required **AX** to be considered differently [36]. This finding was not challenged in the grounds of appeal or in submissions before me. When the decision is read as a whole it is clear that the Judge has rejected the submission that **AX** does not remain proper guidance. As **AX** remained the appropriate guidance the Judge must have considered there was little else to say on the issue of forced sterilisation, as **AX** makes the position very clear.

13. As I set out above Ms Moores was unable to refer me to any evidence whatsoever to suggest that the second appellant falls within any of the risk categories set out in **AX**. Ms Moores accepted that she was unable to take me to any evidence to support a submission that the second appellant would be returned to a 'hukou' area where there is a crackdown accompanied by forced sterilisation. The Judge's credibility findings prevented any reliance upon threats of ill treatment from individuals or family members.
14. In any event **AX** clearly states, "internal relocation will, in almost all cases, avert the risk in the hukou area". Ms Moores was only able to submit that the appellants have people looking for the appellants and would not be able to safely relocate in China. This submission simply flies in the face of the Judge's clear adverse credibility findings.
15. There is clear evidence that as a multiple-child family these appellants are likely to face a number of penalties (see (6) and (7) of the headnote). However hundreds of thousands of unauthorised children are born each year. **AX** specifically considered the position of foreign born children [186-188] before

"We find that in general, couples with foreign born children, over and above the permitted number for that couple...will on return to China not be at real risk of persecution, serious harm or human rights breaches engaging international protection."
16. The Judge has given succinct reasons for finding that the removal of the appellants' children with their parents will not give rise to a breach of Article 8 of the ECHR [34-37]. I note that the Judge refused an application for an adjournment on the basis that the SSHD did not adequately address section 55 of the Borders Citizenship and Immigration Act 2009. However the grounds of appeal, drafted by solicitors, are narrow. As they put it "the only remaining question was what would be the consequence for the appellants in view of the acceptance that the appellants had breached [the family planning scheme]". This is therefore not an appeal in which it continues to be said that section 55 has been breached. The focus of the grounds of appeal and the submissions before me has been on the failure to address the consequences for the appellants of their breach of the family planning scheme.

17. Whilst I accept the Judge could have provided more particularised reasoning why he concluded that the second appellant did not face a real risk of forced sterilisation and / or that the penalties imposed would constitute a breach of Article 8, I find that the appellants should be able to understand why he dismissed their appeals from reading the decision as a whole. The Judge clearly regarded the appellants' claim that they are at risk of ill treatment because of what happened to them in the past to be incredible [22-33]. He was also aware that the appellants feared the consequences of having two children in breach of the family planning scheme [14(xxviii)] and considered submissions from both representatives regarding this particular issue [15 and 18]. The Judge was well aware of **AX** and the OGN but considered that the guidance in **AX** remained appropriate guidance [15, 16, 35 and 36]. The appellants did not rely upon any evidence to support the submission that the second appellant fell into a risk category identified in **AX**. The application of the accepted facts to the guidance in **AX** permitted of only one answer - the appellants and their children are not at risk of persecution or Article 3 ill-treatment and in any event can internally relocate. The Judge set out his reasoning regarding the consequences of the family planning scheme upon Article 8 succinctly. The Judge was therefore entitled to conclude as he did and dismiss the appellants' appeals for the reasons provided.

### **Decision**

18. I do not find that the decision of the First-tier Tribunal contains an error of law.
19. I do not set aside the decision of the First-tier Tribunal.

Signed:

Ms M. Plimmer  
Deputy Judge of the Upper Tribunal

Date: 6 August 2015