



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/12451/2015

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice, Belfast
On 18 May 2018

Decision & Reasons Promulgated
On 07 June 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

MEI HUA WANG
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Beech, instructed by Tim McQuoid, Solicitors
For the Respondent: Mr Matthews, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mei Hua Wang, was born on 4 January 1987 and is a female citizen of China. She claims to have entered the United Kingdom in February 2004. She did not claim asylum until 14 November 2014. By a decision dated 7 August 2015, the respondent refused her application. She appealed to the First-tier Tribunal (Judge Grimes) which, in a decision promulgated on 2 November 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The grounds of appeal are helpfully summarised in the skeleton argument of Mr Beech who appeared for the appellant before the Upper Tribunal. I shall deal with the grounds in the order in which they appear in his skeleton argument.
3. First, the appellant asserts that the Tribunal made perverse and irrational findings on a matter material to the outcome in holding at [17] that the appellant's relatives would support her and at [18-21] that the appellant's partner would be returning to China with her. The appellant submits that the evidence in the appeal did not support those findings.
4. At [17], Judge Grimes wrote:

The appellant said in oral evidence that her mother and older brother live in Fu Qiang in Fujian Province. Although she said that she is not in contact with her brother she is in telephone contact with her mother every two-three weeks. In her witness statement the appellant said she could not rely on her relatives for help in paying any fines. However in cross-examination she was asked if she had enquired as to whether her family would help her financially if she were to be subject to a fine and she said she had never asked. Therefore it is likely that her family members will be able to pay any fines.
5. I am reminded that the burden of proof in the appeal was on the appellant. Her evidence as regards the help which might be forthcoming from her family members was effectively neutral; she could not say that they would not help her because she had never asked them. The judge's finding that the family members were likely to assist was available to her on the basis of all the evidence. The judge's findings were neither irrational nor perverse.
6. Secondly, the appellant challenges the decision on the basis that the judge made a material misdirection of law in its interpretation of the country guidance case of *AX (family planning scheme) China CG* [2012] UKUT 00097 (IAC). The appellant would be an individual unmarried woman returning alone with two children born out of wedlock and a further child born in excess of the family planning scheme.
7. This ground of appeal is predicated on the assumption that the appellant would be returning without another adult to assist her and with her children. The judge considered the position of the appellant's partner at [18]. He is Chinese and he has no immigration status in the United Kingdom. The couple do not cohabit but they are in a subsisting relationship. The judge found that "the appellant's partner would be able to work in China and support the appellant and the children and pay any fines imposed under the family planning policy. He also has family members who are working and who could assist financially." The finding that the partner would be able to return to China with the appellant is sound in my opinion. It was plainly available to the judge on the evidence. The fact that the couple do not cohabit in the United Kingdom is immaterial; there is no dispute that they are in a genuine relationship. Significantly, the partner has no status in the United Kingdom. It is likely that, in the course of events, he will return to China.

8. Thirdly, the appellant complains that the judge failed to have regard or take into account the calculations outlining the actual size of the fine that the appellant would face on return.
9. The appellant's representatives have calculated the possible fine which the appellant would have to pay under the family planning scheme as the equivalent in sterling of £24,000 - £54,000. The appellant seeks to make two points. First, the judge failed to acknowledge that the size of the fine was such that the appellant would be rendered destitute. Secondly, the appellant characterises as perverse the judge's finding at [20] "*any fine imposed and loss of access to services*" will not amount to persecution or serious harm. [my emphasis]
10. I am not persuaded that the judge has erred in law. As the judge reminds herself at [13], breaches of the family planning scheme are to a civil matter not a criminal offence. There was no evidence before the judge that a particularly large fine would have an impact on the appellant and her family which was in any way different from a lesser fine. There was no evidence that exceptionally large fines, if not paid, were followed by any punishment or sanction. As the Tribunal in *AX* found, there was "very little evidence of parents being disproportionately penalised when they returned to China with foreign-born children." We find that the judge did not err in law by refraining from speculating on the possible effects upon this family of receiving a large as opposed to a smaller fine. The findings at [20] were available to her on the evidence and are in accordance with the country guidance of *AX*.
11. Fourthly, the appellant submits that the Tribunal failed to have regard to post-*AX* evidence which relates to the inadequacies of the supposed protection from destitution and forced sterilisation. There was evidence before the judge from the China Central Television website concerning "street children" who had been born illegitimately or in excess of the quotas allowed under law.
12. I find the judge did not err in law. At [22], the judge notes that the "street children" referred to in the article had been accommodated in shelters for orphans. The judge found that this material had no direct relevance in the instant case where the appellant (and probably her partner) would return to China with the children. It is also clear that the judge had in mind that the appellant and her partner would be able to find remunerative employment in China and, in consequence, would be able to pay any fine which might be imposed upon them and, notwithstanding any fine, would also be able to support the family. If the article refers (as the appellant contends) to children who are not technically orphans but have been excluded from their families as a result of their illegitimacy, the judge's approach to this evidence remains valid. I agree with Judge Grimes that there was no direct relevance to the "street children" articles and to the circumstances of this particular family returning to live together in China.
13. I find that Judge Grimes did not err by refraining from departing from the existing country guidance of *AX*. She reached findings which were available to her on the evidence regarding the likely financial circumstances of the family upon return to China and as regards the probability of the appellant's partner returning with the

family. The judge correctly found that the family would not face ill-treatment upon return. In consequence, the appeal is dismissed.

Notice of Decision

14. This appeal is dismissed.
15. No anonymity direction is made.

Signed

Date 2 JUNE 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 2 JUNE 2018

Upper Tribunal Judge Lane