



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

Appeal Number: AA/02918/2013

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 7 October 2013**

**Determination Sent  
on 9 October 2013**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**BC**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mrs F Farrell, of Peter G Farrell, Solicitors  
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

- 1) The appellant, a citizen of China, appeals against a determination by First-tier Tribunal Judge Scobbie, promulgated on 7 May 2013, dismissing his appeal, which was brought on the basis of Chinese Family Planning Policy and of the best interests of his two children.
- 2) The First-tier Tribunal refused permission to appeal. A renewed application to the Upper Tribunal was made on the grounds that the First-tier Tribunal failed to make a specific finding on whether or not children would be registered, without which there could be no full assessment of their best interests. This was said to be a point of distinction from AX (Family Planning Scheme) China CG [2012] UKUT 00097 (IAC), in which there was a positive finding that the children would be registered.

- 3) Mrs Farrell submitted further to the grounds as follows. The argument put to the First-tier Tribunal Judge was that it would be difficult for the family to reside legally in any city or to register their children, because the children were not born within marriage, and no permission was obtained for either child. There would be problems in finding work, in paying social charge and registration fees, and in the children gaining access to health and educational provision. Even if the family was not destitute, this would punish the children for the parents' breach of the family planning regulations, contrary to their interests. On a finding that the children would not be registered the case could not succeed in terms of Article 3, because of AX, but a distinction was to be made as to Article 8, based on the best interests of the children as a primary consideration. A decision should be substituted to allow the appeal.
- 4) Mr Mullen said that at paragraphs 20 and 31-32 of the determination the judge concluded that the appellant was reasonably likely to be able to obtain *hukou* (registration) for himself and his children. He thus would have the ability to support himself, and he would also have assistance from his partner, as the judge found. The determination did not err in law.
- 5) I reserved my determination.
- 6) Paragraphs 20 and 31-32 of the First-tier Tribunal determination set out the respondent's case, rather than the judge's findings. The judge may have shared the respondent's view, but he does not make that entirely clear. However, he did go on to consider AX for himself and at paragraph 56 found that even without an SCP certificate the consequences for this family would not reach the threshold of persecution or of Article 3. The judge was aware that this was an Article 8 case, but concluded at paragraph 57 that the best interests of the children involved their being with both parents in China.
- 7) The following is taken from the headnote of AX:

***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.*

- 8) Crucially, there was no evidence or authority which would have justified a finding of a real risk that the children in this case would go unregistered.
- 9) If there was any error, it was in failing to make an explicit finding of no risk of non-registration. That is not an error requiring the determination to be set aside. In any event, the argument on the best interests of the children amounts to no more than vague reliance on the proposition that their future prospects are better in the UK than in China. That does not come close to rendering their return to China along with their parents a disproportionate step. The conclusion reached by the judge at paragraphs 57 and 58, insofar as it related to Article 8, was properly open to him and is based on legally adequate reasons.
- 10) The determination of the First-tier Tribunal shall stand.
- 11) An anonymity direction was made on the First-tier Tribunal and remains in force.



8 October 2013  
Judge of the Upper Tribunal