



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

Appeal Number: AA/00065/2015

THE IMMIGRATION ACTS

Heard at Upper Tribunal IAC Newport

**On 2 November 2015
Prepared 2 November 2015**

**Decision & Reasons
Promulgated
On 11 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MISS FENQING LIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rhys Davies, Counsel instructed by Wimbledon Solicitors

(Balham High Street)

For the Respondent: Mr Irwin Richards, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of the People's Republic of China (PRC) date of birth 18 June 1983 appealed against the Respondent's decision dated 12 December 2014 to make removal directions following the service of a form

IS151A on 26 June 2013 following the refusal of an asylum/human rights based claim to remain.

2. The appeal against that decision came before First-tier Tribunal Judge Maciel (the Judge) who in a decision re-promulgated on 21 May 2015 dismissed the appeal with reference to the Refugee Convention and under Article 8 and 3 ECHR claims. The Judge also for the avoidance of doubt concluded that the Appellant did not qualify for Humanitarian Protection and a claim based on private life under the Immigration Rules was dismissed.
4. Mr Rhys Davies appeared for the Appellant before the Judge made it plain that the issue of the best interests of the child had not been canvassed before the Judge (Grounds of Appeal ground 1 paragraph 4). The child, date of birth 29 July 2013, had been born to the Appellant in the United Kingdom and had not as yet established her nationality by reference to the PRC.
5. However the principal grounds of a challenge to the Judge's decision set out in what was called ground 1 at paragraphs 4 to 7 essentially sought to argue a number of points of which some have not been effectively pursued before the Judge. It was noteworthy that there are references in the grounds to a family planning scheme which it was said the Appellant breached (see paragraphs 5 and 6). There was not on the face of the evidence a formal family planning scheme for a child born out of wedlock but the background information indicated that a parent who did so may have to pay a financial penalty by way of a civil process.
6. The Judge at paragraph 34 of the determination concluded amongst other things

"I've considered the risk of prosecution on the basis of the Appellant falling foul of the Chinese One Child Policy. I accept the Appellant has a child out of wedlock. I have considered the background evidence. I

find that the Appellant is likely to be fined. However her child will be recognised as a Chinese national and will be registered by the authorities.”

7. The submissions by Mr Rhys Davies were made with reference to later Country Information and Guidance of July 2015 which was not before the Judge and nor was a similar provision confirmed which the Judge seemed to have accepted namely that it was unlawful for an unmarried mother to give birth and doing so could result in a fine. The reference for that comes from the OECD Development Centre Social Institutions and Gender Index China 2014 but that was as far as the matter went.
8. It was said by reference to paragraph 5.6.3 of the OECD document, on a similar basis to that which had previously been, that children born out of wedlock were still regarded with pity and distain, teased at school, single mothers subject to discrimination when accessing housing, education and medical services. The quotation is sourced from the Australian Refugee Review Tribunal China: Family Planning 8 March 2013.
9. Mr Rhys Davies said it followed from that the Judge, assuming he knew something of these matters and assuming the issue had been raised with him which it was not, should have gone on to consider what effects of societal discrimination might have in terms of the best interests of the child.
10. I conclude that the Judge made no error of law for the following reasons. First, the matter was not raised with the Judge in submissions or in the evidence advanced and therefore I do not see that he can be criticised for failing to address it. Secondly, it did not seem to me a Robinson obvious point that needed to be addressed once the Judge found as a fact in paragraph 34 that the Appellant had given birth to a child out of wedlock. Thirdly, the matter was not referred to in a skeleton argument or in submissions made to the Judge. Fourthly, there was no reference raised by the Presenting Officer’s written submissions submitted on the day,

touching upon this issue. Therefore it appeared that it was simply not a matter that the parties were expecting to or did pursue.

11. It was clear that the Reasons for Refusal Letter did address Section 55 BCIA 2004 from 2009 and in the circumstances given the age of the child, the availability of PRC nationality, the evidence simply did not show that either societal discrimination gave rise to the real risk of adverse effects on such a young child who was just over the age of 2 and was being brought up by a Chinese speaking mother.
12. Therefore even if there had been a failure to consider Section 55 BCIA 2000 which of course identified the importance of the child's best interests as a consideration nevertheless there was nothing in the evidence that gave rise to the suggestion that any different decision could reasonably have been reached by another Tribunal looking at this matter for their own part.
13. In these circumstances therefore I find that there are no issues arising from the Judge's failure to address Section 55 of the Act in terms of the child's best interest and no evidence which showed a different decision, had it been considered, would be reached. There was no material error of law that would have made any difference.
14. The Original Tribunal's decision stands. The appeal of the Appellant is dismissed.
15. Given the age of the Appellant no anonymity direction is necessary or appropriate.

Signed

Date 2 December 2015

Deputy Upper Tribunal Judge Davey

Fee Award

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

Signed

Date 2 December 2015

Deputy Upper Tribunal Judge Davey