Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03722/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 July 2017	**On 27 July 2017**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MRS HONG CHEN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Yong, Counsel instructed by Wimbledon Solicitors (Balham High Street)
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of China, has permission to challenge the decision of First-tier Tribunal (FtT) Judge Fox sent on 5 May 2017

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dismissing her appeal against a decision made by the respondent on 8 April 2016 refusing to grant asylum, or humanitarian protection. The judge did not find the appellant credible and did not accept either that she was a Protestant Christian or that she was targeted by the Chinese authorities. Nor did the judge accept she had lost contact with the father of her two children or that she would face problems as a result of having had two children.

2. The grounds of appeal raise six points regarding which the judge is said to have materially erred in law: (i) in failing to assess credibility, fairly or lawfully; (2) in failing to give proper or adequate reasoning in support of his adverse credibility findings; (3) in failing to make a finding of fact in relation to the appellant's claim that she is an unmarried mother; (4) in failing to assess credibility by reference to proper consideration of the background country evidence; (5) in failing to accept that there were exceptional circumstances warranting allowing the appeal on Article 8 grounds outside the Immigration Rules; and (6) in failing to take into account relevant factors when considering Article 8 and the best interests of the child.

3. The FtT judge who granted permission (Judge Robertson) stated that there was little arguable merit in any of the grounds save for (3) although he accepted that error as regards (3) could impact on grounds 5 and 6. Despite the appellant's failure to file a written response to the grant of permission renewing the challenge he brought on the other grounds, Ms Yong sought to argue all six grounds afresh. Whilst it is poor practice on the part of those representing the appellant that no response was lodged, I shall address all six grounds on their merits.

4. The nub of ground 1 is that the judge was procedurally unfair in relying on two inaccuracies in the appellant's evidence that were not identified as such at the hearing either by the Home Office Presenting Officer or the judge. The first concerned her claim to have been sent an arrest warrant by the Chinese authorities. At [56]-[57] the judge wrote:

> "56. The appellant has provided evidence that her friend accompanied the first child to China, obtained the arrest warrant from the home of the child's grandparents and forwarded the arrest warrant to the appellant by post and by email; witness statement dated 15 March 2017 paragraph 20. It is reasonable to expect that this active and transparent engagement with the appellant's circumstances would bring the friend and the grandparents to the adverse attention of the authorities. The absence of evidence in this regard does not assist the appeal.
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> 57. I also note that the appellant stated that she asked her friend to obtain the arrest warrant from her home; witness statement dated 15 March 2017 paragraph 32. This is inconsistent with her statement as particularised above and damages her credibility."

5. As regards the appellant's marital status, the judge said at [60]-[62]:

> "60. AW also states that many children are *unauthorised* and that this cannot amount to persecution of a breach of Article 3 ECHR in itself. I do not accept the appellant's self-serving statement that she has lost contact with the father of her children. The appellant has stated that the first child resides with his paternal grandparents; witness statement dated 15 March 2017 paragraph 27. It is reasonable to conclude that the appellant has an avenue of enquiry at minimum to communicate with the father of her children.
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> 61. I have considered the possibility that the appellant has conceived children with 2 men. However she stated that she separated from the father in April 2015. This leads to the reasonable conclusion that there is only one biological father for her 2 children.
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> 62. The appellant appears to have complied with the spirit of the family planning policy in relation to late birth and birth spacing. The medical evidence demonstrates that she terminated an earlier pregnancy due to the inconvenience of its timing. There is no reliable evidence to demonstrate the appellant's marital status. I can place no weight upon the appellant's uncorroborated statements for the reasons stated above."

6. I find ground 1 is not made out. The appellant had said in her witness statement that the arrest warrant was sent to "our" home in China. At the hearing she said that the arrest warrant was delivered to her mother ([30]). Yet she also provided evidence that her friend, Yah He, had obtained the arrest warrant from the home of her child's (paternal) grandparents. That was a clear inconsistency in the appellant's account. It is true that it was not one that was put to the appellant at the hearing, but at the same time she was cross-examined very fully as regards the arrest warrant, when she learned of its existence, why she had not mentioned its existence at interview, and Ms Yong (who also represented her before the FtT judge) did not re-examine the appellant and in her submissions in response to the Home Office Presenting Officer said the appellant was not aware of the arrest warrant at the time of her interview even though the appellant had said in her evidence that she was (see [29] and [41]). The judge was entitled to consider that the appellant's evidence on this issue had been fully tested and it was a matter for the judge to appraise whether the appellant's account, including as to the address it was sent to, hung together.

7. Similarly the appellant clearly had full opportunity to support the claim that she made at interview that she had lost contact with the children's father (Q165). In her subsequent witness statement she had stated that the first child resides with his paternal grandparents. It was entirely reasonable and fair for the judge to find that the appellant had not

satisfactorily explained why she would not have been able to maintain contact with the father via his parents. I would accept that the judge can be criticised for describing the appellant's statement that she had lost contact with the father of the children as "self-serving", since that descriptor is to a large extent a protean one: see R (on the application of SS v SSHD ("self-serving statements) [2017] UKUT 00164 (IAC), but it is sufficiently clear that by that term the judge only meant to highlight that it served her own case to claim that, it was not credible that she would have lost contact. It must also be borne in mind that the judge very properly found the appellant's evidence regarding the circumstances of the child who had gone back to China unsatisfactory. The appellant claimed he was unregistered, yet she had successfully obtained a travel document for him and had failed to demonstrate why the authorities would subsequently refuse to register him. It was for the appellant to substantiate her case and, even though she had been able to produce a letter regarding the arrest warrant sent to this child's paternal grandparents, she had not produced any documents to show registration of the child had been denied. It was not incumbent on the judge to confront the appellant about the unsatisfactory nature of her evidence regarding her own claim to be an unmarried mother.

8. In relation to ground 2, I have already observed that although the judge can be criticised for more than once describing the appellant's statements as "self-serving" it is clear that what the judge meant to convey by this was that such statements served her own case without satisfactory explanation for their non-corroboration (contrary to Article 4(5) of the Qualification Directive). Ground 2 also contends that the judge failed to give consideration to the consistency of the appellant's lack of knowledge of the Christian faith with "someone who, for a period, has had difficulties attending Church because of children". That contention amounts to mere disagreement with the judge's findings.

9. As regards ground 3, its logic is hard to follow. To the extent that it appears to submit that the judge's error was in failing to make a finding of fact in relation to the appellant's claim that she was an unmarried mother, it is abundantly clear that the judge's comprehensive rejection of credibility embraced a rejection of this claim. It is true the judge does not say in terms "I reject her claim to be an unmarried mother", but at [62] the judge said very clearly that "[t]here is no reliable evidence to demonstrate the appellant's marital status". Given that the onus of proof lay on the appellant, the plain effect of this finding was a non-acceptance of her claim to be an unmarried mother who would return to China on her own. [58]-[64] clearly convey rejection of the appellant's attempt to portray her family circumstances as those of an unmarried lone mother. To the extent that this ground invokes background country information on unmarried/single mothers, this would only significantly assist if the judge had accepted she was an unmarried/single mother.

10. A related difficulty afflicts ground 4 which protests that the judge made adverse credibility findings without properly considering the background

country evidence. Plainly the judge did give careful consideration to the background country evidence, noting the extensive material set out in the parties' bundles and the "available evidence" relating to family planning as well as the evidence to which the Upper Tribunal had had regard in AX (family planning scheme) China [2012] UKUT 0093 (IAC) (see [58] and [59]. Such consideration to the background evidence is also clear from what the judge said at [62]-[63]. The COI cited in ground 4 simply relate concerns about the problems of unregistered children. The judge did not accept that the first child was unregistered and was also clearly satisfied the second child could be registered as well: see [64].

11. Grounds 5 and 6 focus on Article 8 considerations, making the valid point in the abstract that cases can succeed under Article 8 even though they fail under the Immigration Rules on private and family life. However, ground 5 is empty of any substantive content in relation to how it is considered there existed exceptional circumstances in the appellant's case.

12. Further, ground 6 principally relies not on any arguments about the strength of the appellant and her second child's ties to the UK, but on a reassertion of the fact that she would be returned as a single, unmarried mother with a first child who has breached China's family planning scheme. On the judge's clear findings of fact on the appellant's asylum claim, both these claims had been entirely rejected. Given the judge's findings, there was no evidential basis for considering that the appellant and her second child would face, as asserted, "detrimental consequences" if removed to China.

13. For completeness I would add that the judge's assessment that the appellant, just because she had two children, would not be at risk of persecution, serious harm or ill-treatment on return, was consistent with the assessment of the Upper Tribunal in the country guidance case of AX at [189]. The judge's observation about this at [63] was correct.

14. For the above reasons, the FtT judge did not materially err in law. His decision to dismiss the appellant's appeal must stand.

No anonymity direction is made.

Signed Date: 27 July 2017

Dr H H Storey

Judge of the Upper Tribunal