



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/06088/2013

**THE IMMIGRATION ACTS**

Heard at Columbus House, Newport  
On 27 November 2013

Determination Promulgated  
On 11 December 2013

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

Z W K  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr O Manley, instructed by Gloucester Law Centre  
For the Respondent: Mr I Richards, Home Office Presenting Officer

**DECISION AND REMITTAL**

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

2. The appellant is a citizen of China who was born on 28 April 1985 and comes from the Guangdong Province. She arrived in the United Kingdom on 21 March 2010. She was arrested in Bristol on 29 November 2012. The following day she claimed asylum. At the time, she was seven months pregnant and she has subsequently given birth to a daughter in January 2013. On 7 June 2013, the Secretary of State refused the appellant's claim for asylum and humanitarian protection and also that her removal would breach Art 8 of the ECHR.
3. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 6 August 2013, Judge Trevaskis dismissed the appellant's appeal under the Refugee Convention and also under Arts 2, 3 and 8 of the ECHR.
4. The First-tier Tribunal (DJ Appleyard) granted the appellant permission to appeal to the Upper Tribunal. Thus, the appeal was listed before me.

### **Discussion**

5. At the hearing, Mr Manley developed the three grounds upon which permission to appeal had been granted.
6. First, he submitted that the judge had failed to give the appellant's claim "anxious scrutiny and care" as, in para 44 of his determination, he had referred to the appellant "and his partner" giving evidence when that was not the case and that in both paras 44 and 54 the judge had referred to the appellant as being male when, in fact, the appellant was female. In my judgment, there is no merit in this ground. The reference to the appellant as "he" in para 54 could well be a typographical error. I accept that it is more difficult to see the reference to "his partner" (meaning the appellant's partner) giving evidence as a typographical slip. It clearly was not. There is no explanation of why the judge said this when no one but the appellant gave evidence before him. However, in itself, this does not establish that the judge's decision cannot stand providing the judge otherwise fully considered the appellant's evidence and dealt appropriately with it in making sustainable findings. Those are, in effect, the issues raised by Mr Manley in grounds 2 and 3 which he developed before me.
7. Secondly, therefore, Mr Manley submitted that the judge had failed properly to take into account the objective evidence relevant to the appellant's claim.
8. Thirdly, he submitted that the judge had not properly carried out an assessment of the "best interests" of the appellant's child again, in part, failing to take into account all the background evidence relevant to the appellant's claim as to the consequences she would face returning to China as an unmarried woman with a child born out of wedlock.
9. I will take Mr Manley's second and third grounds together. However, I should point out that on the conclusion of Mr Manley's submissions, Mr Richards accepted that the First-tier Tribunal's decision could not stand, either in relation to the appellant's

claim under the Refugee Convention (and Arts 2 and 3 of the ECHR) and also under Art 8 of the ECHR.

10. Before the judge, the appellant's claim to international protection was put on two bases. First, she claimed that she was at risk from "loan sharks" to whom she was indebted for the money that allowed her to travel to the UK. At paras 44-53 the judge gave a number of reasons for concluding that he did not accept her account as credible. At para 54, the judge went on, in the light of that finding, to conclude that the appellant had not established that she was at risk from loan sharks or at risk as a failed asylum seeker on return to China.
11. Mr Manley did not seek to challenge the judge's adverse credibility finding or his conclusion on risk that followed from that finding either in the grounds or in his oral submissions. Instead, Mr Manley submitted that the judge had failed to consider the alternative basis upon which she claimed to be at risk on return, namely that as a returning unmarried woman with a child she would be at risk of forced sterilisation. Mr Manley submitted that the judge had simply made no finding in relation to that and had not considered the background evidence relevant to it.
12. There is no answer to Mr Manley's submission on this point as Mr Richards readily accepted in his submissions.
13. At para 34, the judge set out the respondent's submission that the appellant would not be at real risk of forced sterilisation if she returned to China and at para 42 he also set out the appellant's submission that she would be at risk of sterilisation because she had flouted the law. The judge did not, however, make any findings in relation to that aspect of the appellant's claim and whether or not she would be at real risk on return to her home area in Guangdong Province.
14. Both representatives referred me to the country guidance case of AX (Family planning scheme) China CG [2012] UKUT 00097 (IAC). It was common ground that the Upper Tribunal had not ruled out a successful claim based upon an individual facing a real risk of forced sterilisation where, for example, the individual was being returned at a time when there was a crackdown in her area accompanied by unlawful practices such as forced sterilisation. Mr Manley drew to my attention a number of background documents in the appellant's bundle that was before the judge and, in particular, a document at page 6 headed "China's One-Child Policy Gets Worse" dated 18 June 2013 which records recent reports from the Guangdong Province that the "one-child policy is once again on the rise" and that women are being targeted for sterilisation. The report goes on to state that those who have one child are being forced to wear IUDs and that those who bear an "illegal" child are being denied all government services which means that they must live without access to schools, hospitals, retirement benefits, etc. Suffices that I quote those opening comments of that document to demonstrate that there was at least some evidence before the judge that a "crackdown" was in existence in the appellant's home area in June 2013. The judge did not consider this evidence or AX and reach any finding in relation to the alternative basis upon which the appellant put her

claim to international protection, namely that there was a real risk of her being subject to forced sterilisation in her particular circumstances on return. In failing to do so, as Mr Richards accepted, the judge erred in law and the decision on that aspect of her claim remains to be made.

15. In relation to Mr Manley's submission in respect of the judge's assessment of Art 8 and the "best interests" of the appellant's child, the judge dealt with this not under Art 8 but under the heading "discretionary leave" which is in itself surprising since the issue fell to be considered as part of the assessment of proportionality under Art 8. The judge does not appear in paras 64-70 to have reached a conclusion on where the best interests of the appellant's child lay. These failings, in themselves, leave the judge's decision to dismiss the appeal under Art 8 flawed.
16. But, in any event, the judge failed to take into account the wide-ranging background evidence concerning the implications for the appellant as an unmarried woman with a single child returning to her province of Guangdong. As Mr Manley pointed out, the judge concluded that the financial penalty which the appellant would face (as a result of having a daughter born out of wedlock) could be paid by instalments and so the appellant and her daughter would not be deprived of social benefits such as healthcare and education. That finding, as Mr Manley pointed out, failed to take into account the evidence concerning the level of such penalties and that the payment by instalment must be completed within three years.
17. I agree with Mr Manley that the judge was required to grapple with the evidence relied upon which showed that the penalties were high for a married couple but were double for a single woman such as the appellant. Mr Manley pointed to a document at page 12 of the bundle which, although dealing with another province, namely Wuhan, stated that women who have children out of wedlock could be fined more than £17,000. In addition, the document at page 6 to which I have already made reference states that an "illegal" child (which of course covers the appellant's child born out of wedlock) is denied all government services including access to schools, hospitals, etc. Mr Manley accepted that the appellant could not succeed under Art 3 of ECHR but that the judge had failed properly to consider these matters in determining whether Art 8 would be breached.
18. As I have indicated, Mr Richards accepted that the judge's decision in relation to Art 8 could not stand.

### **Decision and Disposal**

19. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. The judge's decision to dismiss the appeal under the Refugee Convention and Arts 3 and 8 of the ECHR must be remade.
20. Both representatives invited me to remit the appeal to the First-tier Tribunal to remake the decision. That, in my judgment, is the appropriate disposal of this appeal having regard to para 7.2 of the Senior President's Practice Statement, in particular,

the nature and extent of fact-finding required on the basis of the background evidence.

21. In remaking the decision, the findings of the First-tier Tribunal at paras 44-53 shall stand as shall the judge's conclusion in para 54 based on the findings at paras 44-53. In other words, the judge's adverse credibility finding shall stand and also his finding that the appellant would not be at risk from loan sharks on return.
22. The issues for the First-tier Tribunal will be whether the appellant has established a real risk of persecution or serious ill-treatment contrary to Art 3 on the basis of the consequences to her of the 'one-child policy' on return to China, in particular a risk of forced sterilisation. In addition, the appellant's claim under Art 8 of the ECHR should be determined *de novo* and the judge's findings in paras 62-70 are not preserved.
23. Consequently, the appeal is remitted to the First-tier Tribunal (to be heard by a judge other than Judge Trevaskis) to remake the decision in accordance with the above.

Signed

A Grubb  
Judge of the Upper Tribunal