Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/04993/2013

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Promulgated**
On 7 August 2013	**On 24 October 2013**

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Before

UPPER TRIBUNAL JUDGE CLIVE LANE
DESIGNATED JUDGE MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FUNGJUAN YU
(Anonymity Direction Not Made)

Respondent

Representation:

For the Appellant: Mr Mullen, Home Office Presenting Officer
For the Respondent: Mr Katani, Katani & Co Solicitors, Glasgow

DETERMINATION AND REASONS

1. The appellant in these proceedings is the Secretary of State. However, for convenience we shall refer to the parties as they were before the First-tier Tribunal.

2. The appellant is a citizen of China born on 6 January 1990. She appealed against the Secretary of State's decision dated 25 January 2013 refusing her leave to remain in the United Kingdom under the 1951 Convention relating to the status of refugees and on humanitarian protection and human rights issues. The appeal was heard by First-tier Tribunal Judge Mozolowski and in a determination promulgated on 19 April 2013 she dismissed the appeal. An application for permission to appeal was made

and permission to appeal was granted by First-tier Tribunal Judge J M Lewis on 8 May 2013. The grounds argue that the judge did not take into account a report of the Immigration & Refugee Board of Canada dated 1 October 2012, although the judge did consider the background evidence in the COI Report and the Country Guidance case of AX China [2012] UKUT 00097 (IAC). The grounds also argue that the judge did not take into account the best interests of the appellant's child under section 55 of the Borders, Citizenship and Immigration Act 2009. The child was 7 months old at the date of the decision. The grounds state that, given that the Canadian report indicated the possibility of detriment to the child upon return to China, the judge's apparent omission to consider it may have compromised consideration of the child's best interests.

3. There is a Rule 24 response from the respondent opposing the appellant's appeal. This asserts that the judge was not obliged to note and refer to every piece of evidence submitted and there is nothing to indicate that the judge failed to take into account the Canadian report. The judge was bound to follow the Country Guidance and could only depart from its guidelines if there was strong alternative evidence. There is nothing in the grounds that indicates that the Canadian report should or could have led the Tribunal to refrain from following the country guidance. The response states that, in any event, the Canadian report appears to refer to couples whose children are born in China not children born outside China and further, the evidence of some areas denying Hukou to some parents was anecdotal and speculative at best. The respondent considered that there is nothing to indicate that the Tribunal's consideration of the best interests of the child was flawed to any material degree.

The Hearing

4. Mr Katani for the appellant submitted that the issue of outright denial of a Hukou has not been looked at and that what the panel has to consider is whether there is a real risk of a Hukou not being granted to the appellant's child, as if this happens the child may be denied access to education, health care and other services.

5. We asked Mr Katani to consider paragraph 63 of the determination which refers particularly to the Canadian report. Mr Katani submitted that the grounds focus upon an outright denial of a Hukou outside Chinese law and, although the background evidence refers to social maintenance fees which can be paid by instalments, this may not be what happens in practice. If the child has no legal identity and is not considered to be a Chinese citizen he may be deprived of the rights accorded to other Chinese citizens. The Canadian report suggests that this is a real risk and this may be being widely applied. Chinese officials are known for ignoring the law, so the risk is real.

6. The appellant had the child out of wedlock and the Canadian report refers to a Beijing lawyer, who specialises in household registration, stating that the practice of denying Hukou to unauthorised children is not legal but is

widely applied at local levels and the risk to this child lies in the outright denial of a Hukou.

7. Mr Katani submitted that the Immigration and Refugee Board of Canada is a reliable source and the report post-dates the promulgation of AX, which, in any case, only focuses on law rather than practice.

8. The Presenting Officer referred us to R [2012] EWHC 56 (Admin). At paragraph 57, the court observed that, "whilst not diminishing the broad nature of the enquiry, of central and critical importance in assessing the reasonableness of this are likely to be two things – the interest of a child in remaining within the family unit; and the soundness of the environment within which the child will be brought up. The cases and the Guidance lay heavier emphasis on ensuring that basic rights and freedoms from risk are guaranteed, and that there is freedom to enjoy and develop a full family life, than they do upon comparative standards of economic, educational and social provision in one state as opposed to another." A child has to be protected from harm and economic, social and educational rights play a very minor part. This is the framework that has to be considered.

9. The Presenting Officer submitted that only one lawyer had been interviewed in connection with the Canadian report and that had been in 2010. Although the lawyer interviewed stated that outright denial of a Hukou is widespread, too much weight cannot be put on this one source. The geographical context of the article had to be considered and it is not known whether the practice was widespead throughout China. The Tribunal in AX clearly found that denial of a Hukou is not a real risk. The Presenting Officer referred us to paragraph 63 of Judge Mozolowski's determination, where the Canadian report is referred to specifically. The judge found that denial of a Hukou would not be a real risk to the child if he returns to China with his parents. She properly finds that, on payment of a social upbringing charge, which the judge found that the appellant will be able to pay, the child will be registered. The Presenting Officer submitted that there is no reliable evidence which indicates that children are denied Hukous even without the payment of a social upbringing charge and there is nothing in the objective evidence to show that a child who is automatically denied a Hukou will be unable to access education and health care. The background evidence refers to teenagers coming forward for registration in 2010. In any case, the Canadian report refers to children born in China; the appellant's child has been born outside China. On return the child cannot be concealed from the Chinese authorities and when the background evidence is considered in the round, outright denial of a Hukou is unlikely to happen as a consequence of the appellant and her husband and child being removed to China

Determination

10. Judge Mozolowski has referred specifically in her determination to the relevant parts of the COI Report and the relevant paragraphs of the said case of AX. The report by the Canadian Board of Canada points in a

different direction to the rest of the objective evidence. Judge Mozolowski has noted this and has specifically referred to the report at paragraph 63 of her determination. She compared the report to the part of the COI Report on unauthorised children which states that unregistered children can apply for household registration and get a Hukou upon payment of a reduced fine, in order to encourage participation in the census. The judge found that any difficulty which the appellant might encounter with registration could be resolved.

11. Mr Katani's argument is that the child is at real risk of outright denial of a Hukou. The Canadian report states that this can happen, although it is not in accordance with the law which states that all children in China have to be protected. We have not been supplied with clear evidence of the outright denial of a Hukou to a child. The Canadian report is based on an interview with a single lawyer. We are satisfied that Judge Mozolowski anxiously considered this report along with the rest of the background evidence. It was open to her to find that the Canadian report did not require her to depart from the country guidance of AX. Based on the evidence before the judge she was entitled to come to the decision that she did. She has properly explained her decision and has referred to the relevant sources.

12. The child will be returning to China with both of her parents. It is in his interests to be with both his parents. The environment in China in which he will be brought up would appear to be satisfactory. It is not arguable, in our view, that any application of Section 55 of the Borders, Citizenship and Immigration Act 2009 in this instance would alter the outcome of the appeal reached by the First-tier Tribunal.

DECISION

13. The First-tier Tribunal did not make a error of law such that its determination falls to be set aside. This appeal is dismissed.

14. No anonymity direction has been made.

Signed Date

Designated Judge Murray
Judge of the Upper Tribunal