Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06170/2010

THE IMMIGRATION ACTS

Heard at Stoke	**Determination Promulgated**
on 30th July 2014	**On 19th November 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

YUN QIN XUE
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss Rutherford instructed by French & Co Solicitors
For the Respondent: Mr Lister – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This appeal has a long history and returns again to the Upper Tribunal following remittal from the Court of Appeal on 12th April 2011 by Lord Justice Sullivan. The Statement of Reasons accompanying that Courts order is in the following terms:

    1. Since the determination of the Upper Tribunal, which was promulgated on 19th October 2010, the Supreme Court's judgment in ZH (Tanzania) v SSHD [2011] UKSC 4 was handed down on 1st February 2011. In light of this judgment and the

Appellant's fresh evidence concerning her purported children, the parties agree that it is appropriate to remit the Appellant's appeal to the Upper Tribunal for the case to be reheard and for submissions to be made on ZH (Tanzania).

2. Further, no submissions were made before the Upper Tribunal concerning HJ (Iran) [2010] 3 WLR 386, judgment having been handed down by the Supreme Court on 7th July 2010. The Appellant has submitted fresh evidence concerning her religious belief and now seeks to rely on this judgment. A rehearing will allow the fresh evidence to be considered and for submissions to be made on HJ (Iran).

2. Thereafter the case has been before the Upper Tribunal on a number of occasions to allow confirmation of the Appellant's representative, to await the promulgation of the country guidance case relating to the risk to Christians in China of **QH (Christians - risk) China CG [2014] UKUT 00086 (IAC)**, and as a result of the failure of the Appellants representatives to comply with directions relating to the filing of documents which would have resulted in a wasted costs order being made against them but for the failure of the administration to served the required 'show cause' notice upon French and Co.

Background

3. The Appellant was born in China in 1984 and has filed six witness statements in support of her case in addition to giving oral evidence and being cross examined. The core of her claim is that she graduated from primary school in 1997 and from secondary school in 2000. At that time her mother started to believe in Jesus. The Applicant would read the bible to her mother as a result of which she too became interested. In June 2004 the Appellant travelled to another village to collect bibles and on 3rd October 2004 was baptised. In 2005 the Appellant states she was asked to travel to other villages to preach and distribute leaflets although as her knowledge of the bible was not as detailed as it needed to be she attended classes to study the bible. In March 2006 the Police arrested those attending the bible class. The Appellant states she was detained and sentenced to three years education through a labour camp. She was transferred to such a camp although bailed on 30th March 2008 as she required medical treatment. On 25th December 2008 the Appellant attended a church meeting which was raided by the Police although she claims she managed to escape. The Appellant also claims that the Police went to her house and that a wanted notice was issued against her. She left China with the help of the Snakeheads and travelled to Moscow where she met a man who became her partner, Wei Jie Chen. On 5th June 2009 she left Moscow for an unknown country before entering the United Kingdom on 15th August 2009. The asylum claim was made four months later on 7th December 2009.

4. On 30th January 2010 the Appellant gave birth to her son. In June 2011 the Appellant separated from her son's father, Sheng Zeng Chen.

5. In her statement of the 26th January 2012 the Appellant claims to have given birth to a daughter on 15th February 2006 in China out of wedlock. The Appellant claims that as the child was born out of wedlock she will not be permitted to attend

school or receive state medical assistance. The child is being cared for by the Appellant's parents in China as her father has abandoned her. It is also claimed there have been attempts to resolve the child's status which have not proved successful as a result of demands for what are descried as 'exorbitant fees' by the officials concerned.

6. In her statement dated 10th December 2010, prepared for the purpose of the hearing before the Court of Appeal, the Appellant claims not to have a birth certificate for her daughter in China as she was unable to obtain a child-bearing certificate in accordance with the law. The Appellant asserts she is in breach of the 'one child' policy as a result. DNA tests were commissioned. The Appellant also refers to a perceived risk on return as a result of her Christian beliefs under the Ministry of Watchman Nee and Witness Lee. She claims followers of this Ministry are often known as 'The Local Churches' or 'The Lords Recovery' outside China.

7. In her witness statement dated 20th May 2010 the Appellant claims to be a member of the Christian underground church as a result of which she was arrested and sentenced to three years 'education'. She fell pregnant whilst in Moscow and has never been to an official/state church in China and so does not appreciate the differences between her chosen religion and that practiced in other churches. Further comments upon the content of the reasons for refusal letter are made which do not need to be set out but which have been considered in detail by the Tribunal as has all the available evidence, both written and oral.

8. In her witness statement dated 29th July 2013 the Appellant blames her reduced attendance at church in the period between her two statements upon the need to attend English classes, her son having asthma, together with help given to a friend who is ill. It is claimed this made it difficult for the Appellant to maintain her commitment to the church during that time, although since February/March 2013 her son's health has improved and the Appellant claims she is able to attend church regularly. The Appellant specifically states that she has asked the leader of her church to support her in her case but that he has been reluctant to do so.

9. The Appellant claims to attend the church and related meetings as much as possible and that if returned to China she will not be able to openly practice her religion as the only State sanctioned religions are Catholicism and Protestant which she states she will not want to attend because they are not the same denomination. The Appellant also claims she will be unable to practice her religion at home as she will be persecuted and that she practiced in a 'house church' by choice.

10. In her most recent witness statement, dated 9th July 2014, the Appellant states that in China they held meetings in unregistered local house churches. It is also stated that the church cannot be registered as it is viewed as a cult and so the meetings cannot be open. The Ministry is not based upon any name or denomination. The term 'The Lords Recovery' is said to be one of the names attributed to this Christian Ministry by the Chinese Government and other denominations. The

Appellant states the Ministry believe that the Lord is moving today to recover the proper testimony of the church in this age, based upon the truths revealed in the bible.

11. The Appellant also states she meets with fellow followers of this church every Sunday in Nottingham and tries to attend as many home meetings as possible held in member's house on a weekly basis. The Appellant repeats her belief that she will be at risk on return for her beliefs and states that the Chinese government regards the Christian Ministry of Watchman Nee and Witness Lee as 'The Shouters', and therefore a cult in China, as a result of the calling of the Lord's name. She accepts that the Ministry she follows are not part of 'The Shouters' although the Ministry is viewed as a threat by the government as a result of its rapid growth in popularity.

12. The Appellant summarises the elements of her case which give rise to a real risk as being (a) her illegal departure from China in February 2009, (b) her entering the United Kingdom and claiming asylum based upon a fear from the Communist Party thereby tarnishing the good name of China (c) breaching the 'one child policy' and (d) being a member of a Ministry that is banned and unregistered and which has been associated with the Church of Almighty God.

13. In her oral evidence the Appellant claimed that if returned to China she will not want to go to another church as it will not be the same as her faith. She stated that her son born in the UK may be prevented from attending school and that if she is arrested on return there will be no one to care for the child. The child is said to receive medication for his asthma. The child also speaks both English and Mandarin.

14. The Appellant was asked in cross-examination about her comment that she had asked a leader of her church to support her in evidencing her attendance but that he had refused to do so. When asked why this was so the Appellant claimed that it was because she had not asked and that this person was not the leader in any event, but a fellow of the church which had no leaders. When the Appellant asked him to assist her and come to court she stated he did not say he would help her and so in the end she did not ask him. The explanation given for there being no letters in support written by others pre July 2014 was because the Appellant claims not to have asked for them although this reply appears to contradict her claim in her 2013 statement that she had asked the leader before that time, who was hesitant. When this was put to the Appellant she claimed to have been baptised in 2013, to have asked them then, but not since until 2014 as she was aware of her appeal hearing.

15. The Appellant repeated her claim to attend church regularly and to have last attended the Sunday before the hearing which would have been the 27th July 2014. The Appellant was asked when she last missed a meeting but claimed not to be able to remember, although when further questioned on the point claimed it was five or six weeks ago when she did not attend the church as one of the children

had 'something else on'. The Appellant stated that her son attended the church with her.

16. The Appellant stated she has known Mr Wan Bo Chen since February 2012 who does not attend her church, although she claims to have asked him. When asked the last time he attended the church she stated she could not remember but that it was quite a along time ago, a few months, but that she could not remember. When asked why he had not been for a few months she stated it was because of medical procedures undertaken in December 2012.

17. The Appellant claims to have attempted to contact her family in China via the internet and through friends but when it was put to her than no evidence of the same, such as copy e-mails, had been provided in the bundle she accepted this was so.

18. The Appellant was asked clarification questions from the Bench in light of her oral and written evidence. In relation to Watchmen Nee and Witness Lee and their role in the church, the Appellant stated as far as her church were concerned they follow the figures who have gone before and that the bible they use was written by both these men.

19. When asked to name the chapter of the bible that was important to the Church the Appellant stated it was Paul: Chapter 6. When asked the significance of the book of Mathew, the Appellant stated this was an important gospel but could not say why this was to them, but that the New Testament is important.

20. The Appellant was then asked whether The Lords Recovery was her church to which she replied it was not called that, that the church did not have a name and that it was called 'One Church'. Lords Recovery means the bible and is not interpreted in any way. When the Appellant was told this response appeared surprising as Watchmen Nee and Witness Lee were credited with a lot of work for The Lords Recovery and that she was claiming to be involved in a church of which she appears not to know much about, the Appellant's reply was that she did not have any comment.

21. The Appellant was asked what the two things are that the Lord wished to recover. The Appellants reply was that it is that God wants to lead us to a new world. When asked whether they discussed the enjoyment and experience of the riches of Christ in church the response was that they do witness something but do not discuss it or argue about it. They believe what Witness Lee stated about the trinity of god, three in one. I comment upon this aspect of the evidence further below.

22. The Appellant was assisted by a witness Mr Chen who met the Appellant in February 2012 when they were both reporting at the Loughborough Reporting Centre. He claimed in his witness statement dated 8th November 2013 to have attended a 'sisters meeting' at the Appellants house in April or May 2012 and thereafter attended her church around June/July 2012 when he stopped going due

to health issues. He started to attend again in September 2014 and has attended regularly since with the Appellant.

23. Mr Chen is still receiving medical treatment. When asked when he attended church, he claimed he still attended on Sundays. When asked when he last went he stated it was the previous Sunday 27th July 2014. At this point in the evidence the Appellant had to be warned not to speak to the witness as she was observed to be saying something to him. When asked for clarification he then claimed that as the Appellant was not at the church he just went there but that it was the most recent Sunday, three days before the hearing.

24. When asked what he did at the church Mr Chen stated he read the bible, the children played together, although he was only there for a short period of time and did not stay long. When asked how long he remained he stated it was for five to ten minutes. When asked whether he saw the Appellant in church he claimed he only saw the children and that he was there to take the children, which he later stated was a reference to the Appellant's child. When the issue was further pursued by Mr Lister Mr Chen then stated he went to the church for five to ten minutes to see the Appellant's son who was playing with the other children. He then stated that on that Sunday he went to a friends place 'to fetch her'. When asked for clarification he stated he went to see his friend and on the way back went to the church for five minutes after which he had something to do and so went to a friend's. When asked when he last attended a full service at the church he claimed it was when there was a big meeting. He was unable to remember when this was but thought it was in 2013. His evidence is that he sometimes went to church after that meeting, sometimes not, and that it was not fixed. Mr Lister sought clarification for when Mr Chen last attended church to which he stated it was the previous Sunday and before then a week prior to that.

Expert evidence

25. The Appellant also relies upon the reports of her country expert Jackie Sheehan formerly of Nottingham University. The first report, dated 8th August 2013, is to be found at pages 41-113 of the Appellants trial bundle. The report is detailed and refers to the specific instructions given which are to comment upon whether the Appellant would be likely to be at detained on return to China for having left China illegally and if so, what would happen to her young son born in the UK whilst she was in detention; on the Appellants position under the one-child policy as the mother of two children, including the risk of her compulsory sterilisation, and on whether relocation away from her home area would be possible and reduce the risk; and on whether continuing to practice her faith known as the Local Church or the Lord's Recovery Church would put her at risk in China, as well as the risk in her being a practicing Protestant Christian in general and not worshipping in a state-approved church. There is also comment upon the authenticity of the wanted notice.

26. Jackie Sheehan's conclusions are as follows:

4. My conclusions, in summary, are that Ms Xue would be detained as someone who had left China illegally on return to the PRC. Such detention can be for up to one year, but as far as we can tell from rather old sources of information (in COIS China Report October 2012, paragraph 32.04, and previous COIS China Reports), it is more usually for a much shorter period for ordinary migrants as opposed to organisers of illegal migration. However, even short-term detention (e.g. for 15 or 30 days) would involve Ms Xue being separated from her three-year old son, as children cannot stay with their mother in detention. The police would expect relatives to take care of the boy, and if none could be found he will be placed in a state run orphanage. Recent evidence of conditions of detention for women in china has revealed that the kind of facilities shown to outsiders are often just for show, and do not reflect the real and much harsher living conditions of inmates away from the public view. I will say more about this below in my discussion of the risk Ms Xue would face from continuing to worship in an unregistered Protestant church in China.

5. My conclusions with regard to the one-child policy, in summary, are that Ms Xue has violated family planning regulations with the births out of wedlock of both of her children, as well as by not having a birth permit for the second child, and would be the subject of a large fine (social compensation fee) set at a multiple of average annual earnings in rural Zhejiang. Unless this fee was paid in full within three years, the children would not be entered onto her hukou register and could not attend state schools, as well as being barred from other services, and relocation away from Zhejiang would not help, as although fines etc. are assessed and set at local level, compulsory sterilisation for parents of two or more children is a national policy.

6. My conclusion with regard to Ms Xue's Christianity are, in summary, that if she joined a congregation of any unofficial Protestant church in China, she would be at risk of harassment, detention and persecution because of it, as the Chinese authorities are presently engaged in a major crackdown which is intended to force all unofficial church-goers to join the state-controlled faith organisations, the Three-Self Protestant Movement (TSPM), and to destroy any churches that resist. If she continued to worship with the Local Church, also known as the Lord's Recovery Church, which the PRC classes as an "evil cult", this would put her at greater risk of longer-term detention, not only the maximum of three years of Re-education Through Labour (RETL), but possibly a prison sentence of more than three years' duration. The fact she has been abroad would bring her under greater suspicion of acting as a conduit for illegal religious materials from aboard and for continued contact with foreign co-religionists, the avoidance of which is a condition for legal Christian worship in China.

7. Finally, I have examined the wanted circular issued for Ms Xue (discussed in more detail in the relevant section below), and have found nothing in it which suggest it is not authentic. Its wording indicates that of Ms Xue came to the attention of the police again, her case would be treated as a relatively serious one, and the wording of such document is significant, as if the effect a prior announcement by the police of the charges they will bring, and in the Chinese system, 99.9%of criminal defendants are found guilty once charged (as noted in the 2010 and 2011 US State Department Human Rights Report, citing Chinese government statistics). Ms Xue will have to present herself to her local police to resume her hukou registration, and

> could expect to be detained and questioned, at the least, about possible religious links with believers overseas and/or in connection with the 2009 wanted notice. Even short term detention in China carries with it the risk of torture, and in cases involving "cult evil" designated churches, the extra judicial 6-10 office set up to suppress Falun Gong activity could also be involved, which would mean Ms Xue would not enjoy even the limited rights allowed to suspects detained by the regular police.

27. In addition to the publication of the recent country guidance case concerning Chinese Christians there has been, in the interim period, an announcement by the Chinese government of a change to its policies relating to family size as a result of the need to encourage more children to be born in China due to the shrinking population. The Standing Committee of the National People's Congress passed a resolution allowing couples to have two children if either parent is an only child. A proposal to abolish re-education through labour camps has also been approved. The changes in policy were announced following a meeting of top Communist Party officials in November and the reforms, which came at the end of a six-day meeting of the congress, have already been tested in parts of the country.

28. China's population-control policy was introduced in 1979 and restricted couples in urban areas to only one child. In rural areas, families are allowed to have two children if the first is a girl. Other exceptions include ethnic minorities and couples who both lack siblings themselves. The policy has meant that about one-third of China's 1.3 billion citizens were unable to have a second child without incurring a fine which has been said to have led to forced abortions, female infanticide, and the under-reporting of female births and is also implicated as a cause of China's gender imbalance. The reforms need formal legislative approval to be put into effect and it is expected they will be rolled out gradually and incrementally around the country, with provincial authorities entrusted to make their own decisions on implementation according to the local demographic situation.

29. An addendum report from now Professor Jackie Sheehan of the University of Cork was commissioned to address the impact of these changes upon Ms Xue, in relation to which Professor Sheehan states:

> 4. My conclusion. In summary, are that the changes brought in from November 2013, which have yet to be adopted as part of provincial regulations in all part of China, would not make any difference to Ms Xue as they are not retrospective and do not apply to births out of wedlock or to births after the first for which a birth permit is not obtained before conception.

30. Professor Sheehan notes that at the time of writing her report the only provinces which have brought the new policy into force are those she names, which includes Ms Xue's home province. It is said the new policy only applies to qualifying married couples and does not apply to birth out of wedlock which remain a breach of family planning regulations in any event

Discussion

31. There are a number of preserved findings which are the starting pointing in this appeal as follows:

    i. The Respondent accepts that Appellant is a Christian

    ii. There was at the date of the determination of Deputy Upper Tribunal Judge Garratt evidence to support her attendance at a Baptist Church in the United Kingdom.

    iii. The identity of the father of her son is not disputed.

    iv. The Appellant did not suffer persecution in China and is an economic migrant.

    v. The Appellant was not arrested, detained, or sentenced to three years education through labour.

    vii. Judge Garratt was not satisfied that the wanted posters could be relied upon.

    viii. Judge Garratt has not rejected her claim to be a member of a house church.

    ix. It is accepted the Appellant left China illegally with false documents obtained for her by a Snakehead.

    x. The Appellant may be subject to prosecution for illegal exit.

    xi. The Judge was not satisfied the Appellant had shown that she had a second child in China, but proceeded on the basis she had, but found she would not be at risk because couple's from rural China are allowed to have a second child if their first is a girl.

32. It is submitted that subsequent to the above findings DNA evidence has been produced establishing that the Appellant has a daughter whose date of birth is 15th February 2006 and evidence from a country expert has been provided in relation to the wanted poster.

Risk on return due to religion

33. The Appellant claims to attend the Lords Recovery Church in Nottingham. She claims to have attended this church since 2010 and will wish to attend the same church on return to China. It is accepted that a religious group by this name exists and that Watchmen Nee and Witness Lee were part of this church which they

formed in Shanghai but were the subject of adverse attention from the authorities as a result of which Witness Lee emigrated to America.

34. In her evidence, and despite claiming to have been a follower of this church for a number of years, the Appellant's knowledge of core elements of the beliefs of this group was markedly lacking. This included a lack of clear knowledge of fundamental elements of belief.

35. The assertion by the Appellant that the Lords Recovery is a name attributed by the Chinese government, when this is the name of the church group reflecting what they believe in and appearing on their own website, raises further issues regarding the credibility of her claim to be a genuine follower.

36. The Applicants evidence regarding attendance at church in Nottingham and that of Mr Chen was also unsatisfactory and it was noticeable there was a clear contradiction in the evidence regarding when Mr Chan attended the church, which Ms Xue stated was some time ago whereas he said it was the Sunday before the hearing. It was at this point it was noticed Ms Xue had said something to Mr Chen, and had to be warned about not speaking to the witness, after which his evidence became confused and incredible regarding when he visited that church, why, for how long he stayed, and whether he saw the Appellant there.

37. The Appellant has also been found by Judge Garratt not to be a credible witness as a result of inconstancies in her evidence, including that in relation to her detention for alleged church related activities in China, and is therefore a person shown to be willing to rely upon matters which are not true for the purposes of gaining that she seeks in relation to immigration matters; a right to remain in the United Kingdom. The Appellant has been found to be an economic migrant and no more. It is necessary to treat her subsequent evidence with care, whist still maintaining an open mind, as it is accepted that whilst some elements of a case can be untrue not all may be.

38. Judge Garratt accepted the Appellant attended a church in the United Kingdom which he described as a local Baptist Church. Within the bundle is a letter from a Mr Peter Breen who describes himself as a Responsible Brother. The letter is dated 25th January 2012, after the hearing before Judge Garratt, and states the Appellant attends the Lords Day (Sunday) meetings a couple of times a month, that she has not been to the prayer meeting , and that his wife occasionally takes her to the sisters meeting. The church in Nottingham is said to still follow the Christian Ministry of Watchman Nee and Witness Lee according to the New Testament Teaching. A letter from Mrs Breen states she has known the Appellant since May/June 2010 shortly before the earlier hearing.

39. Whilst a persons religious self identity comes from within and is based upon what an individual believes in or not, as the case may be, and that even in a Christian country like the UK it is a fact that whilst not all those stopped and questioned in the street will be able to provide details of the core beliefs of the Christian

churches, it is reasonable to expect a person who claims to be a devout follower of a church and to attend regular services over a number of years to be aware of fundamental core beliefs.

40. Whist the Appellant correctly referred to the importance of the New Testament for this church, when asked about important books of the bible she referred to Paul and gave an inconclusive response in relation to a specify question relating to the Gospel of Mathew. This text is of importance as the principle of recovery is said to be seen in Mathew 19:3-18. The Appellant was also asked what it was the Lord was seeking to recover and gave an incomplete and unsatisfactory answer. The correct answer being that the Lord is working to recover two items central to the achievement of his external purpose which are (a) the enjoyment and experience of the riches of Christ and (b) the practice of the church life in oneness.

41. The question whether the claimed religious identity is genuine needs to be established for the judgment in HJ (Iran) was specifically referred to by the Court of Appeal in the order remitting this case. Although this case was specifically considering a gay appellant the principles arising are equally applicable to religious and political cases. In HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 Lord Rodgers said "When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality. If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant's country of nationality. If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country. If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living "discreetly". If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself why he would do so. If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e g, not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay. If, on the other hand, the tribunal concludes that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution. By admitting him to

asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him". **Lord Hope** said "It is necessary to proceed in stages. (i) The first stage, of course, is to consider whether the applicant is indeed gay. Unless he can establish that he is of that orientation he will not be entitled to be treated as a member of the particular social group. But I would regard this part of the test as having been satisfied if the applicant's case is that he is at risk of persecution because he is suspected of being gay, if his past history shows that this is in fact the case. (ii) The next stage is to examine a group of questions which are directed to what his situation will be on return. This part of the inquiry is directed to what will happen in the future. The question is how each applicant, looked at individually, will conduct himself if returned and how others will react to what he does. Those others will include everyone with whom he will come in contact, in private as well as in public. The way he conducts himself may vary from one situation to another, with varying degrees of risk. But he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it. If he fears persecution as a result and that fear is well-founded, he will be entitled to asylum however unreasonable his refusal to resort to concealment may be. The question what is reasonably tolerable has no part in this inquiry. (iii) On the other hand, the fact that the applicant will not be able to do in the country of his nationality everything that he can do openly in the country whose protection he seeks is not the test. As I said earlier (see para 15), the Convention was not directed to reforming the level of rights in the country of origin. So it would be wrong to approach the issue on the basis that the purpose of the Convention is to guarantee to an applicant who is gay that he can live as freely and as openly as a gay person as he would be able to do if he were not returned. It does not guarantee to everyone the human rights standards that are applied by the receiving country within its own territory. The focus throughout must be on what will happen in the country of origin. (iv) The next stage, if it is found that the applicant will in fact conceal aspects of his sexual orientation if returned, is to consider why he will do so. If this will simply be in response to social pressures or for cultural or religious reasons of his own choosing and not because of a fear of persecution, his claim for asylum must be rejected. But if the reason why he will resort to concealment is that he genuinely fears that otherwise he will be persecuted, it will be necessary to consider whether that fear is well founded. (v) This is the final and conclusive question: does he have a well-founded fear that he will be persecuted? If he has, the causative condition that Lord Bingham referred to in Januzi v Secretary of State for the Home Department [2006] 2 AC 426, para 5 will have been established. The applicant will be entitled to asylum.

42. The starting point in this case must be to ask the question, is the Appellant a Christian? This has been accepted as being the case and is a preserved finding. The second question has to be a consideration of her situation on return. As such the first of these questions cannot be answered in a generalised manner as being a Christian in China will not, per se, place a person at risk on return. The claim of

risk is, however, more specific. It is based upon a following of a particular sect within Christianity, The Lords Recovery. In her report Jackie Sheehan states that the Lord Recovery is not affiliated with the state-controlled TSPM Church which means it is an illegal or 'house church'. It is also a church which is categorised as being an evil cult and subject to severe suppression in China. The numbers of followers of the church are not known but were believed to be in the region of 800,000 in the late 1990's with ongoing membership not thought to be a problem.

43. The Appellant claimed to have been a follower of a Christian church in China and to have been arrested and sentenced as a result of her beliefs and activities, which was not found to be a credible claim. Her evidence is that from August 2010 she has attended The Lords Recovery church in Nottingham yet in addition to the issues referred to above there is the fact no senior representative of the church chose to attend the Tribunal to support her. Whilst it cannot be a requirement in a case for there to be corroboration of a claim, in a case where an Appellant has been shown to be dishonest, the absence of such support does not assist.

44. The Upper Tribunal has also published the recent country guidance case of **QH (Christians - risk) China CG [2014] UKUT 00086 (IAC)**, 14 March 2014, in which the Tribunal held (i) In general, the risk of persecution for Christians expressing and living their faith in China is very low, indeed statistically virtually negligible. The Chinese constitution specifically protects religious freedom and the Religious Affairs Regulations 2005 (RRA) set out the conditions under which Christian churches and leaders may operate within China; (ii) There has been a rapid growth in numbers of Christians in China, both in the three state-registered churches and the unregistered or 'house' churches. Individuals move freely between State-registered churches and the unregistered churches, according to their preferences as to worship; (iii) For Christians in State-registered churches (a) Worship in State-registered churches is supervised by the Chinese government's State Administration for Religious Affairs (SARA) under the RRA; (b) The measures of control set out in the RRA, and their implementation, whether by the Chinese state or by non-state actors, are not, in general, sufficiently severe as to amount to persecution, serious harm, or ill-treatment engaging international protection; (c) Exceptionally, certain dissident bishops or prominent individuals who challenge, or are perceived to challenge, public order and the operation of the RRA may be at risk of persecution, serious harm, or ill-treatment engaging international protection, on a fact-specific basis; (iv) For Christians in unregistered or 'house' churches (a) In general, the evidence is that the many millions of Christians worshipping within unregistered churches are able to meet and express their faith as they wish to do; (b) The evidence does not support a finding that there is a consistent pattern of persecution, serious harm, or other breach of fundamental human rights for unregistered churches or their worshippers; (c) The evidence is that, in general, any adverse treatment of Christian communities by the Chinese authorities is confined to closing down church buildings where planning permission has not been obtained for use as a church, and/or preventing or interrupting unauthorised public worship or demonstrations; (d) There may be a risk of persecution, serious harm, or ill-treatment engaging international

protection for certain individual Christians who choose to worship in unregistered churches and who conduct themselves in such a way as to attract the local authorities' attention to them or their political, social or cultural views; (e) However, unless such individual is the subject of an arrest warrant, his name is on a black list, or he has a pending sentence, such risk will be limited to the local area in which the individual lives and has their hukou; (f) the hukou system of individual registration in rural and city areas, historically a rigid family-based structure from which derives entitlement to most social and other benefits, has been significantly relaxed and many Chinese internal migrants live and work in cities where they do not have an urban hukou, either without registration or on a temporary residence permit (see AX (family planning scheme) China CG [2012] UKUT 00097 (IAC) and HC & RC (Trafficked women) China CG [2009] UKAIT 00027); (g) In the light of the wide variation in local officials' response to unregistered churches, individual Christians at risk in their local areas will normally be able to relocate safely elsewhere in China. Given the scale of internal migration, and the vast geographical and population size of China, the lack of an appropriate hukou alone will not render internal relocation unreasonable or unduly harsh.

45. The Appellant's personal evidence reflects the views of the expert but it has been found that in general, the evidence is that the many millions of Christians worshipping within unregistered churches are able to meet and express their faith if they wish to do. The fact the church the Appellant claims to follow is a house church is not, per se, determinative. The finding that the evidence does not support a finding that there is a consistent pattern of persecution, serious harm, or other breach of fundamental human rights for unregistered churches or their worshippers also suggests no real risk, although the finding there may be a risk of persecution, serious harm, or ill-treatment engaging international protection for certain individual Christians who choose to worship in unregistered churches and who conduct themselves in such a way as to attract the local authorities' attention to them or their political, social or cultural views, may assist the Appellant if such views are genuinely held and part of her personal identity and represent a genuinely held fundamental belief.

46. Whether the claimed belief and following is genuinely held is for the Appellant to establish on the facts. Attendance at church is one element but the evidence of this is not of regular attendance every Sunday and of attendance which appears to have started at this particular church just prior to the hearing before Judge Garratt, to have lapsed in the interim, and increased or become more regular as this hearing has approached. There is an apparent lack of understanding despite a long period of attendance and workable understanding of English of core elements of this faith group. I am not persuaded on the basis of the available evidence that the Appellant has substantiated her claim that her following of The Lords Recovery is as a result of a genuinely held fundamental belief in the teachings of this church. I find it is more likely, even to the lower standard applicable to appeals of this nature, to be a sur place activity undertaken by the Appellant as part of her attempts to be permitted to remain in the United

Kingdom; a claim that has again been one tainted by dishonesty and an attempt by her to influence her witness in court when she must have realised the reply he gave regarding the occasions he attended church contradicted her own evidence. The Appellant may be a follower of Christ and believe in the Christian teachings but it has not been proved that her conduct on return will be such that she will wish to attend a banned church or that she will be required to act in a manner inconsistent with the principles of HJ (Iran).

The wanted poster

47. I mention the wanted poster at this stage as Miss Rutherford made a specific submission in her supplementary skeleton argument that the wanted poster relied upon before Judge Garratt has now been authenticated by Jackie Sheehan. The findings of Judge Garratt were not challenged before the Court of Appeal in relation to this issue and are preserved findings. They were reached for reasons set out at paragraph 48 – 61 of that determination and by the application of the Tanveer Ahmed principle and the finding the evidence was inconsistent with the background information. It was found such a means of detection was not likely to be used for a person with no profile other than as a congregational member (although this element was also not found to be credible for sustainable reasons). The report of Jackie Sheehan refers to the format of the document which appears to her to be original but this aspect was commented upon in paragraph 50 of the determination where the Judge noted that wanted posters could easily be forged or obtained from corrupt police officers. Having considered the submissions made and the evidence in the expert report I do not find it appropriate to go behind the preserved unchallenged finding of Judge Garrett on this matter. The current material does not arguably show such findings were beyond those available to the Judge on the evidence or that a grave injustice will be done by maintaining the same.

Breach of the family planning policy

48. There is reference in the Appellants material to the hukou system. In QH (Christians - risk) China the Tribunal held the hukou system of individual registration in rural and city areas, historically a rigid family-based structure from which derives entitlement to most social and other benefits, has been significantly relaxed and many Chinese internal migrants live and work in cities where they do not have an urban hukou, either without registration or on a temporary residence permit (see AX (family planning scheme) China CG [2012] UKUT 00097 (IAC) and HC & RC (Trafficked women) China CG [2009] UKAIT 00027). In the light of the wide variation in local officials' response to unregistered churches, individual Christians at risk in their local areas will normally be able to relocate safely elsewhere in China. Given the scale of internal migration, and the vast geographical and population size of China, the lack of an appropriate hukou alone will not render internal relocation unreasonable or unduly harsh.

49. The country guidance case of AX (family planning scheme) China CG [2012] UKUT 00097 (IAC) was decided prior to the reforms in the scheme referred to above. In this case the Tribunal held that (i) In China, all state obligations and benefits depend on the area where a person holds their 'hukou', the name given to the Chinese household registration system. There are different provisions for those holding an 'urban hukou' or a 'rural hukou': in particular, partly because of the difficulties experienced historically by peasants in China, the family planning scheme is more relaxed for those with a 'rural hukou'; (ii) It is unhelpful (and a mistranslation of the Chinese term) to describe the Chinese family planning scheme as a 'one-child policy', given the current vast range of exceptions to the 'one couple, one child' principle. Special provision is made for 'double-single' couples, where both are only children supporting their parents and their grandparents. The number of children authorised for a married couple, ('authorised children') depends on the provincial regulations and the individual circumstances of the couple. Additional children are referred as 'unauthorised children'; (iii) The Chinese family planning scheme expects childbirth to occur within marriage. It encourages 'late' marriage and 'late' first births. 'Late' marriages are defined as age 25 (male) and 23 (female) and 'late' first births from age 24. A birth permit is not usually required for the first birth, but must be obtained before trying to become pregnant with any further children. The Chinese family planning scheme also originally included a requirement for four-year 'birth spacing'. With the passage of time, province after province has abandoned that requirement. Incorrect birth spacing, where this is still a requirement, results in a financial penalty; (iv) Breach of the Chinese family planning scheme is a civil matter, not a criminal matter. **Single-child families:** (v) Parents who restrict themselves to one child qualify for a "Certificate of Honour for Single-Child Parents" (SCP certificate), which entitles them to a range of enhanced benefits throughout their lives, from priority schooling, free medical treatment, longer maternity, paternity and honeymoon leave, priority access to housing and to retirement homes, and enhanced pension provision; **Multiple-child families** (vi) 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; (vii) 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; (viii) 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; (ix) 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; (x) There are regular national campaigns to bring down the birth rates in provinces and local areas which have exceeded the permitted quota. Over-quota birth rates threaten the employment and future careers of birth control officials in those regions, and where there is a national campaign, can result in large scale unlawful crackdowns by local officials in a small number of provinces and areas. In such areas, during such large scale crackdowns, human rights abuses can and do occur, resulting in women, and sometimes men, being forcibly sterilised and pregnant women having their pregnancies forcibly terminated. The last such crackdown took place in spring 2010; **Risk factors** (xi) In general, for female returnees, there is no real risk of forcible sterilisation or forcible termination in China. However, if a female returnee who has already had her permitted quota of children is being returned at a time when there is a crackdown in her 'hukou' area, accompanied by unlawful practices such as forced abortion or sterilisation, such a returnee would be at real risk of forcible sterilisation or, if she is pregnant at the time, of forcible termination of an unauthorised pregnancy. Outside of these times, such a female returnee may also be able to show an individual risk, notwithstanding the absence of a general risk, where there is credible evidence that she, or members of her family remaining in China, have been threatened with, or have suffered, serious adverse ill-treatment by reason of her breach of the family planning scheme; (xii) Where a female returnee is at real risk of forcible sterilisation or termination of pregnancy in her 'hukou' area, such risk is of persecution, serious harm and Article 3 ill-treatment. The respondent accepted that such risk would be by reason of a Refugee Convention reason, membership of a particular social group, 'women who gave birth in breach of China's family planning scheme'; (xiii) Male returnees do not, in general, face a real risk of forcible sterilisation, whether in their 'hukou' area or elsewhere, given the very low rate of sterilisation of males overall, and the even lower rate of forcible sterilisation; **Internal relocation** (xiv) Where a real risk exists in the 'hukou' area, it may be possible to avoid the risk by moving to a city. Millions of Chinese internal migrants, male and female, live and work in cities where they do not hold an 'urban hukou'. Internal migrant women are required to stay in touch with their 'hukou' area and either return for tri-monthly pregnancy tests or else send back test results. The country evidence does not indicate a real risk of effective pursuit of internal migrant women leading to forcible family planning actions, sterilisation or termination, taking place in their city of migration. Therefore, internal relocation will, in almost all cases, avert the risk in the hukou area. However, internal relocation may not be safe where there is credible evidence of individual pursuit of the returnee or her family, outside the 'hukou' area. Whether it is unduly harsh to expect an individual returnee and her family to relocate in this way will be a question of fact in each case.

50. The above case undermines a number of elements of the Appellants case. It is accepted the Appellant already has a child in China cared for by her parents and the child born in the UK. As such she is a multiple child family which it is said will

result 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. It has to been shown that the impact upon the Appellant or her child of the same is such as to place the United Kingdom in breach of any of its international treaty obligations. Such a claim has not been substantiated. The Appellant mentions the fine which appears to be a reference to the 'social upbringing charge' which is based on income, with a down payment of 50% and three years to pay the balance, although the Appellant has no income at present. It has not been substantiated that if returned she will be unable to meet such a fine within the permitted period or that she has no contact with family members who may be able to assist with child care or in meeting any financial obligation she may have. The assertion she has not been able to contact per parents has not been substantiated on the evidence. It has not been shown that a failure to pay the fine within the permitted period will result in consequences that create a real risk of a breach Article 3 or 8 ECHR for her or her child. To suggest the same is speculative.

51. There are a considerable number of unauthorised children born every year and the claim the Appellant will be unable to register her children is also incorrect as family planning officials are not entitled to refuse to register unauthorised children. Payment for birth permits, for the registration of children, and the imposition of SUC charges for unauthorised births are also a significant source of revenue for local family planning authorities.

52. The financial consequences for a family 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. The Appellant has failed to substantiate her claim that this does not hold true for her.

53. It has not been established there is a large scale crackdown in her hukou area such as to create a real risk of forcibly sterilisation. As found in the country guidance case, in general for female returnees there is no real risk of forcible sterilisation or forcible termination in China. No credible real risk of the same has been substantiated for the Appellant on return.

Relocation

54. In HC & RC (Trafficked women) China CG [2009] UKAIT 00027 the Tribunal found amongst other things that, due to reforms of the Chinese household registration system known as the "hukou" system, it was unlikely that a returned trafficked single woman would be obliged to return to the place where she was registered. The reforms have made it relatively easy for ordinary migrant workers to get legal, albeit temporary, urban registration and there is no reason why this should not extend to returned single women. The Tribunal also found that pre-marital sex is now commonplace in China and women's earning power is growing, particularly in the wealthy cities of the east. As a result, the number of

single mothers in China is growing, albeit from a small base and although a birth permit may not be obtained, nonetheless it is possible for hukou for the child of a single mother to be obtained depending upon where the application is made. Moreover, the Tribunal found that the Chinese state has an obligation to house the homeless and will not allow their citizens to starve. Therefore a returned woman without family support will not be allowed by the authorities to fall into a state of destitution.

55. Also, in the event a real risk exists in the Appellants 'hukou' area, it may be possible to avoid the risk by moving to a city. Millions of Chinese internal migrants, male and female, live and work in cities where they do not hold an 'urban hukou'. Internal migrant women are required to stay in touch with their 'hukou' area and either return for tri-monthly pregnancy tests or else send back test results. The country evidence does not indicate a real risk of effective pursuit of internal migrant women leading to forcible family planning actions, sterilisation or termination, taking place in their city of migration. Therefore, internal relocation will, in almost all cases, avert the risk in the hukou area. However, internal relocation may not be safe where there is credible evidence of individual pursuit of the returnee or her family, outside the 'hukou' area. No such risk of this nature has been substantiated for the Appellant on the facts. Whether it is not reasonable to expect the Appellant to relocate in this way will be a question of fact in each case. I find it has not been substantiated on the evidence that it will be unreasonable in all the circumstances for the Appellant and the children to relocate internally if she faces a real risk in her home area.

Failed asylum seeker

56. The claim to be at risk as a failed asylum seeker is not substantiated. The Appellant's evidence is noted as are the penalties that are available if the authorities wish to apply the same. The Appellant has not been shown to be anything other than an economic migrant and has not created a profile for herself that will place her at risk on return, actual or perceived. The Appellant does not have to reveal her attendance at the church as this has been found not to represent a genuine fundamentally held belief that she cannot be expected to lie about to avoid persecution. Is has been found to be a cynical sur place activity and no more.

57. In WC (Illegal Departure- Failed Asylum Seeker) China CG [2002] UKIAT 03295 it was argued that the treatment of the appellant as a returned failed asylum seeker who may illegally have left China was such that it would amount to an interference with her human rights. The Tribunal noted the objective evidence. At paragraph 6.115 of the Country report it was recorded that the act of exiting mainland China without permission is an offence and if this is the only unlawful act committed by the immigrant then they are punished under Article 14 of the Law of the People's Republic of China on the Exit and Entry of Citizens (1986). The prescribed penalties for this offence are that they "may be given a warning, or placed in detention for not more than 10 days by a public security organ".

Paragraph 6.116 points out that there are certain overlapping provisions under which it is possible for fines to be levied and that the rate may depend upon where they have come from. At paragraph 6.117 it is said "one expert noted that the Chinese government does not generally mistreat returnees unless the person has been deported to China more than once. If a returnee is held to be involved in the smuggling operation, then they are subject to the criminal procedure law." Paragraph 6.161 onwards referred to a range of opinion amongst those experts, one of whom said that the offence may lead to administrative sentence of three months, although most of the experts agreed that for a first offence only a fine was likely to be imposed. Either way the Tribunal concluded that this would not breach the Appellant's human rights. The Tribunal also appeared to accept that there are no long-term repercussions for returnees or any evidence that they are treated differently depending on where they are returned to.

58. The Appellant is a first time offender and it is therefore more likely that she will receive a fine in the absence of aggravating circumstances of which none that are credible have been made out in this matter.

59. As did the Judge of the First –tier Tribunal and Deputy Upper Tribunal Judge Garratt, I find the Appellant has failed to substantiate her claim to be at risk on return to the extent that she is entitled to be recognised as a refugee, to a grant of humanitarian protection, or to succeed under Articles 2 or 3 ECHR.

Article 8

60. It is not suggested Appellant is able to succeed under the Immigration Rules in relation to her family or private life in the United Kingdom. Her only family life appears to be with her son who will be returned with her to China where their family life can continue. The child's father returned to China during the course of the proceedings.

61. When considering whether there are elements that warrant the appeal being allowed outside the Rules it is necessary to consider whether there are any elements which make the decision disproportionate. The Secretary of State's case is set out in the refusal letter although as this hearing is after 28th July 2014 it is necessary to consider section 117 of the NIAA 2002 as amended by the Immigration Act 2014, which I have done

62. There is a child born in the UK but it is accepted the child in not a 'qualifying child' under the current legislation. Miss Rutherford submitted section 55 is relevant and ZH (Tanzania) is specifically mentioned in the remittal order. A summary of the principles established in case law can be found in the judgement of the Supreme Court in Zoumbas v SSHD [2013] UKSC 74 in which it was found that:

10. In their written case counsel for Mr Zoumbas set out legal principles which were relevant in this case and which they derived from three decisions of this court, namely *ZH (Tanzania)* (above), *H v Lord Advocate* 2012 SC (UKSC) 308 and *H(H) v Deputy Prosecutor of the Italian Republic* [2013] 1 AC 338. Those principles are not in doubt and Ms Drummond on behalf of the Secretary of State did not challenge them. We paraphrase them as follows:

    (1) The best interests of a child are an integral part of the proportionality assessment under article 8 ECHR;

    (2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;

    (3) Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;

    (4) While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;

    (5) It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;

    (6) To that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and

    (7) A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent.

11. These principles arise from the United Kingdom's international obligations under the United Nations Convention on the Rights of the Child, and in particular article 3.1 which provides:

    "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

    That general principle of international law has influenced the way in which the Strasbourg court has interpreted the ECHR: *Neulinger v Switzerland* (2010) 28 BHRC 706, para 131.

12. Mr Lindsay for Mr Zoumbas also founded on a statement in the judgment of Lord Kerr of Tonaghmore in *ZH (Tanzania)* at para 46 in support of the

proposition that what is determined to be in a child's best interests should customarily dictate the outcome of cases and that it will require considerations of substantial moment to permit a different result. In our view, it is important to note that Lord Kerr's formulation spoke of dictating the outcome of cases "such as the present" and that in *ZH (Tanzania)* the court was dealing with children who were British citizens. In that case the children by virtue of their nationality had significant benefits, including a right of abode and rights to future education and healthcare in this country, which the children in this case, as citizens of the Republic of Congo, do not. The benefits of British citizenship are an important factor in assessing whether it is reasonable to expect a child with such citizenship to live in another country. Moreover in *H(H)* Lord Kerr explained (at para 145) that what he was seeking to say was that no factor should be given greater weight than the interests of a child. See the third principle above.

13. We would seek to add to the seven principles the following comments. First, the decision-maker is required to assess the proportionality of the interference with private and family life in the particular circumstances in which the decision is made. The evaluative exercise in assessing the proportionality of a measure under article 8 ECHR excludes any "hard-edged or bright-line rule to be applied to the generality of cases": *EB (Kosovo) v Secretary of State for the Home Department* [2009] AC 1159, *per* Lord Bingham at para 12. Secondly, as Lord Mance pointed out in *H(H)* (at para 98) the decision-maker must evaluate the child's best interests and in some cases they may point only marginally in one, rather than another, direction. Thirdly, as the case of *H(H)* shows in the context of extradition, there may be circumstances in which the weight of another primary consideration can tip the balance and make the interference proportionate even where it has very severe consequences for children. In that case an Italian prosecutor issued a European arrest warrant seeking the surrender of a person who had earlier broken his bail conditions by leaving Italy and ultimately seeking safe haven in the United Kingdom and had been convicted of very serious crimes. This court held that the treaty obligations of the United Kingdom to extradite him prevailed over his children's best interests. The third principle in para 10 above is subject to the first and second qualifications and may, depending on the circumstances, be subject to the third. But in our view, it is not likely that a court would reach in the context of an immigration decision what Lord Wilson described in *H(H)* (at para 172) as the "firm if bleak" conclusion in that case, which separated young children from their parents.

63. The child is young and it has not been shown his life is other than focused upon his mother. He is not a British national and shall be returned with his mother to China within the family unit he is familiar with. His extended family is in China, as is his father, and it has not been shown he will be unable to access education, even if it has to be paid for, or other essential services. Having considered the childes best interests with the required degree of weight they deserve and require in law, I find it has not been hsown that the decision is not proportionate when the fifth of the Razgar questions was being considered, even if the child may have a better future in the United Kingdom. As such, there is no basis for allowing the

appeal outside the Rules. The Respondent has shown the decision to be proportionate to the legitimate aim relied upon by the Respondent.

Decision

64. **The First-tier Tribunal Judge has been found to have materially erred in law and her determination set aside. The original determination of the Upper Tribunal was set aside by the Court of Appeal and the case remitted. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

65. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. The Upper Tribunal did not make an anonymity order in 2010. Having reviewed the need for such an order I make that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 but only in respect of the naming of the Appellants child.

Signed…….
Upper Tribunal Judge Hanson

Dated the 17th November 2014