Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/02643/2015**

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reason Promulgated**
on 7 December 2015 and 26 January 2016	**on 3 February 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

X W
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, Advocate, instructed by Maguire, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION and REASONS

1. First-tier Tribunal Judge Bradshaw dismissed the appellant's asylum appeal by determination promulgated on 6 May 2015.

2. The appellant appealed to the Upper Tribunal on the following grounds:

"...

Ground 1 – Danian Point

2. The FTT erred in law when rejecting the appellant's claim based on her membership of the Xin Min party:

(i) the FTT erred in law at paragraphs 82-83 when finding that it did not accept the appellant would continue her membership and activities in China and found that the appellant had said this in order to improve her chance of success in her asylum claim. The FTT has erred in law by failing to have regard to *YB v Secretary of State for the Home Department [2008] EWCA Civ 360 (see also Danian v Secretary of State for the Home Department [2000] Imm AR 96)* which held that activities other than *bona fide* political protect could create refugee status. The FTT erred in law by failing to take account or assess the case on the basis that although it might be unpalatable that the appellant might become entitled to refugee status as a result of her cynical manipulation, if objective she had a well-founded fear of persecution by reason of political opinion, that might be a reality (see *YB, supra* as approved in *KS (Burma) and NL (Burma) v Secretary of State for the Home Department [2013] Imm AR 525* at paragraphs 32-33). The FTT erred in law by failing to recognise that there is no principle as relied on that a claimant is not entitled to asylum if she has manufactured her claim by reason of her activities in the UK or indeed would carry on with those activities in China. Opportunistic activity is not an automatic bar to asylum. Whether a claimant's consequent fear of persecution or ill-treatment is well-founded is an objective question. The purpose is to assess whether such activities would expose the claimant to persecution or serious harm if returned. That suggests that the initial inquiry is whether the authorities in the country of origin are likely to observe and record the claimant's activity and it appears to countenance a possible finding that the authorities would realise that the activity was opportunistic and insincere. In that event the fear of consequent ill-treatment might be ill-founded. However, the appellant does have a well-founded fear as the party is proscribed and standing the country information as to how the Chinese authorities view political dissent, the FTT was not entitled to say that the appellant did not have a well-founded fear of persecution. The FTT had objective evidence that the Chinese government suppressed political opponents. It therefore required little or no evidence to arrive at a strong possibility that the government monitored oppositionist groups and had informers. The FTT was not entitled to say that the appellant did not have a well-founded fear of persecution.

Ground 2 – Flawed Credibility Finding

3. It is submitted that the FTT erred by arriving at flawed credibility findings when assessing the appellant's claim based on her membership of the Xin Min party:

(i) notwithstanding the foregoing ground, the appellant maintains that the FTT has erred in law in disbelieving her. The FTT finds at paragraphs 60-88 that the appellant's contention that she would go out to introduce the public to the party in the hope that people would join them was inconsistent with the country information which showed that communication among members is by email and blog. However, the FTT has erred in law as there is no true inconsistency as the country information only related to communication between members and not how persons were recruited to the party. The FTT

has thus erred in law by relying on this purported inconsistency when in fact there is no true inconsistency. In other words, the FTT erred in law as the evidence did not support the finding of the FTT;

(ii) the FTT erred in law by falling into speculation/conjecture at paragraph 66. The FTT embarks on a number of assumptions on which there was no or insufficient evidence to base those assumptions. Indeed the FTT accepts that it had no information as to whether the appellant had a computer or access to same;

(iii) the FTT erred in law by failing to act in a fair manner at paragraph 66. If the FTT had any such concerns it ought to have clarified those with the appellant. The appellant has been denied an opportunity to respond to the FTT's queries on which the findings at paragraph 66 are based;

(iv) the FTT erred in law at paragraph 67 by relying on the fact that the appellant has not provided any evidence to support the contention that party members were involved in activities in the street. However the FTT has erred as there is no onus on an asylum seeker to corroborate her claim;

(v) the FTT erred in law at paragraph 75 by placing reliance on the fact that the appellant did not have a high political profile in China. However, the FTT has fallen into error as there is no evidence to show that it is only high profile members that are at risk, when the FTT notes that the organisation is proscribed by the Chinese authorities (see paragraph 61 of the FTT's decision) and which would indicate that any member is at risk;

(vi) the FTT erred in law when finding that as the appellant has not been involved with the party for a period of 6 years within the UK. In stating the reasons why the appellant was not involved, the FTT has not taken into account or failed to assess or explain how it has assessed the appellant's explanation that she could not find anything about the party in Glasgow. It is unrealistic to maintain that the appellant could involve herself in the party's activities in London when she was an asylum seeker being accommodated in Glasgow through NSS with limited finances and limited access to finding out about the party;

(vii) in light of the foregoing, the FTT erred in law is disbelieving the appellant's political claim and that the remaining errors are not sufficient to allow the rejection of the appellant's political asylum claim to stand."

3. First-tier Tribunal Judge Simpson granted permission to appeal to the UT by decision dated 27 August 2015, adding this (slightly cryptic) observation:

> "As to *AX* (family planning scheme) China CG [2012], there is no need to ignore evidence from an expert as to matters that post-date the promulgation of that case."

4. In a Rule 24 response dated 15 September 2015 the respondent says the judge gave adequate reasons for finding that the appellant was not a member of the Xin Min party; that the judge noted at paragraphs 80 and 81 that the appellant had not participated in any political activities in the UK since 2009; and that the judge was

entitled to find that there was little evidence to show that the appellant might be at risk on return to China.

5. In light of the observation by the permission judge, the appellant under cover of a letter dated 24 September 2015 sought to amend by adding a third ground of appeal:

> … the FtT [failed] to exercise anxious scrutiny in relation to the expert report which post-dated country guidance and / or was not considered in AX .. specifically looking at the situation in Fujian suggesting that the appellant would be at real risk of sterilisation or forcible insertion of an IUD (¶29-37 of the report) that internal flight would be unreasonable (¶57-65) and that … it would not be in the best interests of the children to be returned (¶38 onwards).

6. Having heard the submissions for the appellant on 7 December 2015, I allowed the amendment. Mr Matthews unfortunately had not received intimation of the proposed third ground. Mr Winter accepted that it would be reasonable to give time to reply. There was also a lack of time to complete all cases before the UT on the day.

7. I indicated that I was not persuaded by the first ground of appeal. It makes a great deal of the correct approach to a *sur place* claim, but glosses over the fact that the appellant described only minimal involvement in the UK with the party to which he claimed allegiance. The ground also fails to identify any passage in the determination which misstates or misapplies the law about activities conducted in bad faith to enhance a claim. Beyond that, the hearing was adjourned for further submissions to be made.

8. These are the written submissions for the respondent:

"…

2. In light of the fact that the Upper Tribunal found that they were not persuaded by the appellant's first ground of appeal, this response to the appellant's oral submissions does not dwell on the substance of that ground. The ground ignores the finding at paragraph 82 that the appellant wasn't to be believed when she said that she was still studying materials about her party whilst she was in the UK [and] the finding at paragraph 83 that the appellant gave evidence that "*she would continue to participate in activities of the party in China and that she was still studying material for the party at the moment because she thought that it was appropriate to answer in this way as it would improve her chances of success in her asylum claim.*" The FtT went on to give detailed reasons for that finding …

3. Standing the Upper Tribunal's rejection of the first ground of appeal, the appellant's second ground of appeal becomes irrelevant. That is because the appellant's own claim, even if it is taken at face value, is that she had limited involvement with the CNDP in China for a limited time there. There was no evidence before the FtT that the Chinese government had found out about her involvement despite the appellant's best efforts to say that she was likely to be on a list – see paragraphs 71 and 84 of the FtT's determination. The FtT's finding at paragraph 75 that she had not established that she would be of interest to the authorities if she returned to China on the basis of her

membership of the party, in conjunction with the findings at paragraph 82 and 83 regarding whether she has retained any interest in politics, effectively determine the appeal on the basis of political opinion against her. This is, after all, an appellant who presents no evidence that the authorities were aware of her claimed activities in China before she left, nor any evidence that they have subsequently become aware. As such it is difficult to see where any risk to her might arise from.

…

5. Taking the points in the sub-paragraphs of ground 2 in turn:

(i) Firstly, it is important to note that the FtT considered this issue in the round taking into account all of their other findings. They include their finding at paragraph 59 that the appellant had not given a satisfactory explanation to her lack of knowledge over a fundamental matter, at paragraph 67 they noted there was a contradiction between what her team leader was said to have told her to do and her actual activities and finally that she was not believed in paragraphs 82 and 83 about her claimed activities in the UK or her intended political activities in China.

Secondly, the operative part of the FtT's decision on this point is in paragraph 66. That contains an entirely intelligible and reasonable assessment of the evidence with appropriate and lawful inferences being drawn. The FtT are not saying that the evidence showed that the recruitment process happened only on line. What they are saying is that it was reasonable to conclude, in the circumstances, that she would have been aware that the main means of communication was on line and that as a member of the party, it was reasonable to conclude that she would have had some resource made available to her to allow her to communicate with other members in that way, if she was as interested in the party as claimed. That finding involves a lawful inference from the evidence as a whole and a finding on the appellant's general credibility ie if she really was as interested in the party as she claimed then she would have communicated with other members on line. That was a finding open to the FtT.

(ii) Submissions on this point are made above …

(iii) There was no requirement to seek clarification. The issue was the subject of evidence in both cross-examination and re-examination. The drawing of an inference from that evidence does not require the possible inference to be put to an appellant and no authority is cited in support of such a proposition.

(iv) Noting what the evidence says or does not say is not an error of law. In any event the operative part of that paragraph is the lawful reference to the contradiction in the appellant's evidence referred to in (i) above.

(v) Firstly, there was no evidence which the appellant pointed to which established that someone who had a distant involvement, at a low level, with the CNDP was at risk. There was no evidence that the Chinese

government knew of her past involvement. There was no accepted evidence that she would be involved again with that organisation if we returned to China. Taking that into account the finding at paragraph 75, made after considering the evidence in the round, that the appellant hadn't established any basis to say that she was at risk in China was unassailable.

Secondly, the fact that the organisation was proscribed wasn't of itself capable of being evidence which was supportive of low level, historic, members being at risk. There are after all 10 million people said to support that organisation in China.

(vi) This point is simply a disagreement. There is no basis to say that the FtT failed to take into account the matters referred to in this sub-paragraph of ground 2. Given the other difficulties in her evidence the FtT were well entitled to be unimpressed by her evidence on this point.

6 The new ground 3 is that the FtT failed to exercise anxious scrutiny in relation to an expert report which post dated *AX* China CG [2012] UKUT 000097 (IAC) or was not considered in *AX*… specifically looking at the situation in Fujian suggesting that the appellant would be at real risk of sterilisation or forcible insertion of an IUD, that internal flight would not be reasonable and that it would not be in the best interests of the children to be returned.

7 … There is also no substance to this ground of appeal. … The FtT had regard to the report of Ms Gordon and gave careful consideration to it – paragraph 86. In paragraph 89 of the FtT indicated that they took into account what was said in Ms Gordon's report but, essentially they preferred the guidance in *AX*. As such, anxious scrutiny was given to the expert report.

8 Ms Gordon's report does not deal with the position of children born outside of China, or more specifically in this instance, Fujian province. At paragraph 19 she appears to assume that as the children were born out of wedlock the appellant and her partner would be liable to a fine of 4 to 6 times the average annual disposable income of urban residents (the appellant is an urban resident). The fine would probably be higher given that a second child has been born of the relationship.

9 The Upper Tribunal in *AX* did deal with the issue of foreign born children. They gave general guidance at paras 186-190. They noted and accepted Professor Fu's evidence regarding the existence of statutory protection against destitution at paragraph 186. At paragraph 187 they noted the attitude taken by provincial authorities to parents returning to China with foreign-born children is unclear. Some indicated that they would be considered authorised whilst others said that they would not and the children would only be registered on payment of a fine. The level of a SUC, even if it is imposed, is not likely to be beyond the means of a couple who have lived abroad for years. There was little evidence of parents being disproportionately penalised when they return with foreign born children – paragraph 188. Their ultimate conclusion, which is entirely apposite to this case given the claim that the appellant as an unmarried mother who was not entitled to have any children, is that foreign couples who

have children over and over the permitted number are not at real risk of persecution or serious harm – paragraph 189. Moreover, as the Upper Tribunal noted in paragraph 173 family planning officials are required to register children born outside of the regulations once a SUC has been paid.

10 In any event, the FtT specifically agreed with the respondent's reasons for refusing the claim on the grounds of family planning – paragraph 90. Paragraph 34 of the decision letter referred to the assisted voluntary return scheme in place at the date of decision which allowed for financial payments of up to £2000 per family member. The amount of fine which the appellant might face is unknown. However, in paragraph 203 of *AX* the Upper Tribunal held, in the context of Hunan, that the fine of 6 to 8 times the income multiplier for that province would be between £2940 and £3920. On the assumption that the fine would be around that level it would be within the appellant's means to pay that if she took the assisted voluntary return package – a finding endorsed by the FtT here. As in *AX* there is no basis here to suggest that the children would not be registered because a fine could not be paid – see also paragraph 204 of *AX*.

11 Otherwise the report of Ms Gordon is said to support the proposition that there is a risk that the appellant would be subjected to forcible sterilisation or the forcible insertion of an IUD. Nothing in Ms Gordon's report on this issue would justify a departure from what the Upper Tribunal found in *AX* on this issue. Some of what is said by her on this issue seems to be unsupported general assertions – see paragraphs 34 and 37. Reference to the decision of the US Court of Appeals for the Seventh Circuit to support her assertions is entirely misplaced. That decision was a decision to remit the appeal to the decision maker to consider the evidence again and is not any authority for the guidance in *AX* being wrong – see *DL* [2014] CSOH 147. Some of the expert evidence before the Upper Tribunal in *AX* was that a mother of 4 children was overwhelmingly likely to be forced into sterilisation – paragraph 92. It was clearly a live issue. However, the Upper Tribunal, on the extensive evidence available to them were not satisfied that there was in general a real risk of sterilisation aside from when there are 'crackdowns' – paragraph 185. The evidence in Ms Gordon's report falls very far short of providing a principled basis for departing from that clear conclusion reached after considering extensive evidence.

12 As such, given that the findings of the FtT are essentially that any fine which might be levied could be paid (given that they refer to the decision letter and adopt what it says) and that there was no evidence in Ms Gordon's report which would allow them to depart from *AX* in relation to forcible sterilisation, they have not committed the error of law which the appellant now complains they have. To the contrary, they have reached a decision on this issue which was clearly lawful with reference to *AX* and the report of Ms Gordon. In addition there is no basis to say that the children would not be registered on the payment of a SUC. Consequently, internal relocation does not arise and there is no basis to say that the best interests of the children would be harmed on account of the family planning regulations.

13 Should those submissions not be accepted the respondent submits that the appeal should still not be allowed on remaking. That is because there have been further relaxations of the family planning regulations so as to permit couples to have 2 children – http://www.bbc.co.uk/news/world-asia-34665539. The appeal should either be remade and dismissed or a further hearing should be convened in order to consider the relevance of the further relaxation of the scheme."

9. These are the final written submissions for the appellant:

1 The appellant would not seek to expand on Ground 1 as amplified in oral submissions at the last hearing. In any event the Upper Tribunal has found that in its view Ground 1 has no merit.

Ground 2

2 In response to paragraph 3 of the respondent's submissions:

(i) … the respondent's submissions go too far in suggesting that due to the rejection of the first ground of appeal, Ground 2 becomes irrelevant. Ground 2 is a stand alone ground and has no connection to the first ground;

(ii) although the respondent cites paragraphs 71 and 74 of the FtT's decision, the appellant's position was that she was at risk as other members had been arrested and she was told not to return (see paragraph 24 of the FtT's decision);

(iii) The respondent cites paragraphs 75 of the FtT's submission but that is subject to challenge in the grounds.;

(iv) the respondent cites paragraphs 82 and 83 of the FtT's submission but those findings are undermined if the grounds are made out and in particular whether the grounds undermine the findings that the appellant is not at real risk;

(v) it is correct to say that the appellant has presented no evidence that the authorities were aware of her claimed activities in China before she left nor any evidence that they have subsequently become aware. The appellant presented her own oral and written evidence to confirm that the authorities have become aware of her involvement. It must also be remembered that an asylum seeker is not under an obligation to corroborate her claim.

3 In response to paragraph 5 of the respondent's submissions and dealing seriatim with the respondent's sub-paragraphs:

(i) … the error at Ground 2(1) is well-founded. Although paragraph 59 of the FtT's decision is not challenged, … that finding on its own would not be sufficient to refuse the appeal. Paragraph 67 of the FtT's decision is also

challenged in the grounds of appeal. Paragraphs 82 and 83 of the FtT's decision are undermined if the errors are made out as there would have to be a re-assessment of whether the appellant is at risk.

The appellant maintains that the FtT fell into error for the reasons set out at Ground 2(1). The country information which is relied on is quoted at paragraph 19 of the refusal letter (see E7 of the Home Office's bundle). The quotation states:

> *"… the party is a proscribed organisation and to this extent does not possess any meaningful hierarchy as we would understand. Communication among members (ie those who have subscribed to the on line, what I might call "virtual party") is by email and blog …"*

The country information indicates that it is communication between members which is done online. It does not state how recruitment is undertaken. Further, the country information relates to those who are already members. Although the party disseminates information, this is to those who are already members.

(ii) … the country information indicates that communication among members ie those who have subscribed online is done by email. However, as the ground states the FtT had no or insufficient evidence that the appellant had access to a computer and accordingly erred in law by falling into speculation;

(iii) The appellant maintains this ground is well-founded;

(iv) The appellant maintains this ground is well-founded;

(v) As pointed out the party is a proscribed party and the appellant maintains that in light of that there is a real risk. As noted above there was evidence that the Chinese government knew of the appellant's involvement (the appellant's testimony is evidence). Even if the FtT disbelieve that the appellant would not involve herself with the party on return, that does not matter if the findings in relation to the authorities wanting to find her are undermined by the errors in the grounds.

Although there are 10 million members, these are said to be in the US, New Zealand, Taiwan and Canada (See G1 and G2 of the Home Office's bundle). It is very unclear how many members are actually in China.

(vi) … there is an error of law identified namely failing to take account and/or assess evidence which is material to the outcome of the findings in this paragraph.

Ground 3

4 In relation to paragraph 7 of the respondent's written submissions, although the FtT had regard to the expert report (paragraph 86 of the FtT's decision), anxious

scrutiny has not been demonstrated. That is to say that not every factor in favour of the appellant has properly been taken into account. … the word "properly" is to be emphasised in order to show that lip service is not to be paid to the contents of the report. In particular the contents of the report were required to be anxiously scrutinised as it relied on information which was either not considered or assessed in *AX* (*family planning scheme) China CG [2012] UKUT 00097I (IAC)* (see paragraph 7 of the expert report). The expert report focused on the situation in Fujian Province (see paragraphs 13-37 of the expert report) whereas *AX* gave general guidance without focusing on a particular Province in China. The guidance given in *AX* is of limited value where there is specific information relating to a specific Province especially in relation to forced sterilisation/forcible insertion of an IUD (see paragraphs 29-37 and 47-49 of the expert report and contrast this with the generalised findings of *AX* at paragraph 180 and 184-185.

5 The information contained in the expert report looked at the specific practice in Fujian and from the expert report it did not appear that one needed to show there was a general crackdown to show the appellant was at risk of forcible sterilisation or forcible insertion of an IUD (see the paragraphs of the expert report which are referred to in these submissions). This would undermine the findings at paragraph 89 of the FtT's decision.

6 In relation to paragraphs 8-9 of the respondent's written submissions, it is clear that even if the expert report does not deal with foreign born children, paragraphs 61-66 of *AX* and also paragraph 26.37 of the COI report make clear that there will be no SUC imposed on foreign born children in Fujian Province if they fall into a particular exception. None of the exceptions set out by the regulations applicable to Fujian apply to the appellant.

7 In any event, the fact that the children have been born in the UK and outside of wedlock would not appear to change the fact that she would be required to either be subjected to forcible sterilisation or be subject to forcible insertion of an IUD (see the paragraphs already cited above in relation to the expert's report).

8 In relation to paragraph 9 of the respondent's written submissions:

(i) although there is protection against destitution, an assessment would still have to be made as to whether it is in the best interests of the child where they would nevertheless suffer disadvantages by not being able to be registered where the appellant is unlikely to be able to afford to pay the SUC (see paragraphs 50-56 of the expert report). *AX* does not appear to deal with the best interests of the child where the SUC is not likely to be paid;

(ii) further *AX* looked at the situation of couples returning and not single parents;

(iii) even if the SUC was paid it would not affect whether the appellant is to be forcibly sterilised or be subjected to forcible insertion of an IUD;

9 In relation to paragraph 10 of the respondent's written submissions:

(i) the refusal letter did not say in absolute terms the appellant would receive £2000. Indeed there was no evidence produced by the respondent to show what package the appellant would obtain.

(ii) further … even if the appellant can afford to pay the SUC, this would not appear to result in her escaping either forcible sterilisation or being subjected to forcible insertion of an IUD

10 In relation to paragraphs 11 and 12 of the respondent's written submissions:

(i) the expert acknowledges she looks at information which post-dates or which was not assess in AX (see paragraphs 7, 29-37, and 47-49 of her report);

(ii) although the expert has not footnoted or sourced paragraph 34 of her report , it has to be borne in mind that the expert is a source herself and indeed has sourced/footnoted many of the other findings and the report has to be read as a whole;

(iii) the expert is simply saying that her view is supported in terms of the decision of the US Court of Appeals for the Seventh Circuit;

(iv) the appellant in *AX* was from a different province than that of the present appellant;

(v) the expert report looks at the issues of forcible sterilisation or forcible insertion of an IUD as they pertain to Fujian Province (see paragraphs of the expert report which have already been referred to) and in light of that there is sufficient justification for departing from the general guidance in *AX*;

(vi) although the FtT, at paragraph 89, follows the guidance of *AX* in relation to internal relocation, the expert's information when dealing with internal relocation focuses also on the impact that will have on the children (see paragraphs 57-65 of the expert report). Such information as to how internal relocation impacts on the children was not assessed in *AX*. The findings on internal flight in *AX* are found at paragraph 191(14).

11 In relation to paragraph 13 of the respondent's written submissions, the appellant submits that the expert had noted that the relaxation of the family planning regulations would not resolve the appellant's fear (see paragraph 10 of the expert report).

12 … the foregoing errors and these submissions would also impact on the assessment of the best interests of the children undertaken by the FtT at

paragraphs 93-102. For the reasons outlined in the oral submissions and above, it would not be in the best interests of the children to be returned to China.

13 In light of the foregoing, there are material errors of law. The Upper Tribunal can remake the decision itself or alternatively convene a further hearing to hear evidence *de novo*.

10. At the resumed hearing on 26 January 2016, subject to the observations above regarding ground 1, I reserved my determination.

11. On ground 2, I have no difficulty in preferring the submissions for the respondent, for the reasons given by Mr Matthews. The matter does overlap with ground 1. There is no overall error in arriving at the adverse credibility finding, for which the judge gave several sensible reasons. He found accordingly that the appellant's connection to the Xin Min Party was not established. The claim to be at risk for reasons of political opinion was a very skimpy one.

12. I turn to ground 3.

13. The submission in the First-tier Tribunal regarding the expert report is recorded at paragraph 53. It was based on the appellant and her partner being unmarried, unlike in *AX*; on her having breached a number of conditions of family planning policy; on the fines involved; and on the distinction, re forced sterilisation, that if the appellant could not pay compensation she would have to undergo that procedure. The judge said at paragraph 86 that he had given careful consideration to the report, but went on at paragraphs 88-90 to apply AX, to the effect that financial consequences did not generally reach the necessary threshold of severity; risk of forced abortion or sterilisation was limited to instances of crackdowns in a *hukou* area; there was no evidence that the appellant fell into that category; and any such risk could in any event be avoided by moving to a city as many millions of Chinese internal migrants had done. The judge at paragraph 89 noted from the expert report that changes were to be implemented in November 2014 to allow two children, which might operate to the benefit of the appellant and her partner. He concluded that there was no real risk of persecution or ill-treatment in China for breach of family planning regulations.

14. The appellant now argues that *AX* is of limited value where there is specific information relating to a specific province, in this case Fujian. However, the conclusions of *AX* on internal relocation are general, not geographically restricted, so such information would not undermine the FtT's conclusions.

15. The expert, Ms Gordon, states at paragraph 7 that she defers to recent Country of Origin Information Reports and to *AX*, and that she presents primary evidence "collected last year" and not included in *AX*. However, the appellant has not demonstrated that there is any substantial evidence later than and different from that considered by the Tribunal in *AX*. The expert quotes a few individual examples she has encountered, in particular at paragraphs 31-33. She draws on her own research to justify the conclusion at paragraph 48 that *Hukou* denial is an insurmountable barrier "for some parents across China", having previously estimated that the

number of children unregistered and without *Hukou* is higher than the 13 million officially estimated.

16. There is nothing of substance in the report to displace the conclusion in *AX* that there was very little evidence of parents being disproportionately penalised when they returned to China with foreign born children, even if they did so over and above the permitted number for that couple, and that was not an outcome which placed them at real risk.

17. The respondent makes a reasonable point about the resettlement assistance available to the appellant (and her partner). It is well known to practitioners within this jurisdiction that such packages are available. It is obvious that such resources would go a long way towards paying any social compensation fees.

18. There is no error in the conclusion that the application of *AX* to the facts of this case required it to be dismissed. That much was effectively common ground.

19. A judge is required to apply and treat country guidance as authoritative in a case which depends upon the same or similar evidence. The need to tackle that issue head on, if the appellant was to succeed, was not well focused in the First-tier Tribunal and did not emerge until prompted by the judge granting permission. In arguing the amended grounds, the appellant has not pointed to any substantial evidence underlying the expert report which is distinct in nature from the evidence considered in *AX*.

20. Judge Bradshaw did not only say that he gave careful consideration to the report, he plainly did so; he makes specific further reference to it in paragraph 89.

21. The submissions about the best interests of the children seek to add to that aspect of the case but do not show any error, as the matter is to be approached on the basis of their return with their parents, resulting in no disadvantage greater than any other ordinary family returning to China.

22. The appellant's case, as fully developed in light of the observation in the grant of permission, does not disclose any material error in the determination, and it shall stand.

1 February 2016
Upper Tribunal Judge Macleman