Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number:** PA/05919/2019

THE IMMIGRATION ACTS

Heard at Glasgow	Decision & Reasons Promulgated
On 14 November 2019	On 19 November 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

P H C

Respondent

For the Appellant: Mr M Clark, Senior Home Office Presenting Officer
For the Respondent: Mr K Forrest, Advocate, instructed by Chung, Solicitors

DETERMINATION AND REASONS

1. Parties are as above, but the rest of this determination refers to them as they were in the FtT.

2. FtT Judge Kempton allowed the appellant's appeal by a decision promulgated on 16 August 2019.

3. The SSHD's first ground of appeal to the UT is headed "standard of proof".

4. This ground says at [2-4] that the expert report of Dr Gordon, and in turn the judge, erred by thinking it better to assume that sterilisation practices in China had not changed, pending evidence emerging to the contrary.

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5. It makes good sense, and is usual practice, to assume that a risk, once established, has not disappeared until evidence emerges that it has; particularly in a jurisdiction based on reasonable likelihood.

6. The grounds at [5] do not correctly represent the decision at [35]. The judge did not find that there was risk "even if forced sterilisation does not continue". What she said that is that even if there were no local crackdown, the size of the appellant's family singled her out for precisely such a risk.

7. Mr Clark sought to make the best of ground 1, suggesting that the expert stated no evidential basis for her position on enforced sterilisation, and that the judge failed to follow country guidance and to consider the terms of the refusal letter. By that argument, it would be wrong to wait for further evidence to emerge, particularly as the trend is towards a more lenient family planning policy. However, that is not a line of challenge to be found in ground 1, which does not mention country guidance.

8. As Mr Forrest pointed out, the judge justifies her decision by reference to the circumstances: the appellant has three children, is of Roman Catholic beliefs, is unwilling to practice artificial birth control, and wishes to have an unrestricted size of family. The grounds did not challenge the judge's findings on these points at [22] and [27]. It was logical, and not a lowering of the standard of proof, to conclude at [35] that she was likely to be singled out for attention and to be at "greater than average" risk.

9. I find that the ground 1 does not show that the judge "lowered the standard of proof", even "inadvertently". It would be extraordinary for a judge of many years' experience to go wrong on what is perhaps the best known feature of this jurisdiction.

10. Ground 2, on article 8, is well taken. The judge was wrong to conclude from the fact that the appellant's husband has a form of leave that the family cannot be expected to leave as a family unit, or that it would be a breach of the rights of the appellant and her children to remove her. However, as both representatives accepted, if ground 1 is not made out, ground 2 is immaterial.

11. The decision of the First-tier Tribunal shall stand.

12. The FtT made an anonymity direction, although for no apparent reason. The matter was not addressed in the UT. Anonymity is maintained herein.

14 November 2019
UT Judge Macleman