

Refugee Review Tribunal

AUSTRALIA

RRT RESEARCH RESPONSE

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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

RESPONSE

1. Are there any more recent reports on the treatment of 2nd or 3rd children born overseas if they return to China (with particular reference to Fujian)?

There are several recent reports on the treatment of families who have more than one child overseas and then return to China; and on families with more than one child generally. Many reports contain some information specific to Fujian province. The reports contain diverse views, but most indicate that extra children, especially from educated middle-class families, would not experience particular difficulties on returning to China. Reports vary on the subject of whether fees would have to be paid for access to services, and on the amount payable.

An October 2004 DFAT advice about family planning regulation in Guantou town (which is in Fujian) states that where one or both parents had travelled overseas for study, they were allowed to have two children. However, fees would be charged for the third and any subsequent children. According to the Fujian regulations for excess births generally, the fee for the first excess birth was “between two and three times the county or township per capita annual income; the fee for the second such birth is between four and six times the per capita annual income; and the third and any subsequent births will require payment of an additional (unspecified) fee”; in Lianjiang County of Fujian province, the annual per capita income varied between 3000 and 7000 RMB according to area. However, it was not clear whether the same figures would apply to families returning from overseas (Department of Foreign Affairs and Trade 2004, *DFAT Report No. 327 – RRT Information Request: CHN17017*, 7 October – Attachment 1).

An April 2004 DFAT advice contains more information on Fujian:

The Provincial regulations on Family Planning regard children born outside the province (including children born overseas) as not subject to Fujian family planning rules. That is to say

they are not counted in assessing penalties for giving birth to more than one child. The problem is getting children born outside Fujian registered with the Fujian authorities. In general terms, such registration is necessary to access state schools in Fujian. Evidence suggests that the problem of registration of children can be overcome by payment of an extra fee of several hundred or thousand RMB. In addition, in Fujian now, there are many private schools and clinics which will enrol or treat unregistered children. Their fees are not excessive by Chinese standards. Registration, while preferable when seeking work, is no longer essential in Fujian as more than 15% of Fujian's population are unregistered workers...

...If the children were born overseas, the mother would not be expected to pay large fines for exceeding the birth quota. The registration of the children born overseas may entail an extra fee but this applies to all children born outside Fujian and the fee would not be excessive by current day Chinese standards (Department of Foreign Affairs and Trade 2004, *DFAT Report 287 – RRT Information Request: CHN16609*, 22 April – Attachment 2).

A further DFAT report from September 2004 does not discuss children born overseas, but is still relevant

...Furthermore, in present day China, particularly in provinces such as Fujian and Guangdong, sanctions relating to family planning can be avoided through payment of a fee to local authorities, parts of which may be both above and below the table. Such fees are generally not excessive by middle-class Chinese standards, though fees vary from locality to locality (DFAT 2004, *DFAT Report 317 ‘RRT Information Request: CHN16905’*, 2 September – Attachment 3).

An August 2005 response by the Canadian Research Directorate quotes sources that claim returning families would not experience difficulties:

While implementation of family planning regulations varies from region to region, a China specialist at the United States (US) Department of State is quoted in a 2004 US Citizenship and Immigration Services (USCIS) report as saying that he had received no reports of couples experiencing difficulties upon returning to Fujian and Guangdong after having had children overseas (US 21 Jan. 2004). A University of California (Irvine) anthropologist who has researched the subject of family planning in China told the USCIS that “[i]n general, people who return to China from abroad are actively welcomed back to the ‘motherland’, and children born outside China largely forgiven” (US 21 Jan. 2004). Implementation of family planning policies would appear to be easier for officials in urban areas while in the countryside, rules are more lax (*the Economist* 18 Dec. 2004; *The Guardian* 14 Apr. 2004) (Immigration and Refugee Board of Canada 2005, *CHN100385.E China: Penalties faced by couples returning from overseas who are in violation of family planning regulations (2001 – 2005)*, 25 August – Attachment 4).

A December 2005 European Country of Origin Information Seminar examined the Chinese one child policy among other issues. After outlining the difficulties experienced by “black children” generally, it goes on to state:

The consequences for asylum seekers repatriated to China who did not follow the One-Child-Policy, are different. Parents responsible for pregnancies or births without permission in China could face some of the difficulties mentioned above. But Chinese couples living abroad are not bound to the One-Child-Policy. Chinese citizens studying or working in foreign countries can return with more than one child without any serious problem (ACCORD, HHC & UNHCR 2006, ‘China’, *10th European Country of Origin Seminar, 1-2 December 2005, Budapest*, 17 March – Attachment 5).

A 2002 report by the US Citizenship and Immigration Services Resource Information Center examined the situation of workers and peasants returning to China with extra children (as opposed to students and professionals). It does not mention Fujian particularly:

According to a China Desk officer at the US State Department, anecdotal evidence suggests that workers and peasants are often forced to pay fines when they return to China after having more than one child abroad (USDOS 11 Jun 2002)...

...A University of California (Irvine) anthropologist who is an expert on China's family planning program, and who co-wrote a 2001 RIC report on the topic, said she has little information about whether returning workers and peasants who violated birth control policies while abroad receive the same lenient treatment as students and professionals. She noted that, in general, Chinese citizens who have "above quota" children while abroad are treated more leniently than those who violate quotas inside China (Expert 11,12 Jun 2002)...

A China specialist at the US Census Bureau's International Programs Center said that while she has no specific information about the treatment of returning workers and peasants who violated Chinese birth control policies while abroad, she suspects that treatment in individual cases depends on the person's dependence on the state for jobs and basic services. Workers and peasants returning to China with more than one child, particularly those who are not working in the state sector, might be able to avoid problems with local bureaucrats until they try to access local services such as schooling for their children, she said (China specialist 12 Jun 2002).

The State Department China Desk officer said that most reports about the treatment of returnees come from urban areas and that there was little information about the treatment of returnees in rural areas. This lack of information could reflect the fact that most peasants and workers who return to China after living abroad often do not resettle in rural areas, even if they have rural roots... (United States Citizenship and Immigration Services Resource Information Center 2002, *Response CHN02002.ZNY 'China: Information on Treatment of Returning Peasants and Workers Who Violated the One-child Family Planning Policy While Abroad'*, 12 June – <http://uscis.gov/graphics/services/asylum/ric/documentation/CHN02002.htm> – Accessed 1 October 2004 – Attachment 6).

A 2001 report by US Department of Justice states that generally there are no fines or penalties for extra births that occur abroad:

The question frequently arises whether Chinese couples who have an unauthorized child while residing abroad are likely to face penalties upon returning to China. The evidence available suggests that, in many if not most cases, the answer is no. The relevant regulations do not call for penalties. Interviews with officials from Fujian and Guangdong produced the following account. If the woman became pregnant before leaving the country, the couple must pay the out-of-plan birth fine. However, if the woman became pregnant while abroad for ordinary reasons, the couple is not fined. Because the government wants to encourage students studying abroad to return to China, generally speaking there is no fine or other punishment for extra births that occur while they are abroad. Both Fujian and Guangdong have many Chinese citizens going in and out of the country on ordinary business, particularly from Guangdong to Hong Kong and back. Officials said that trying to control the behavior of such travelers is neither feasible nor necessary. Permission to travel abroad requires some clear purpose, and it is relatively easy to identify someone trying to go abroad simply in order to have a child (Greenhalgh, Susan & Winckler, Edwin 2001, *Chinese State Birth Planning In The 1990s And Beyond [PS/CHN/01.001]*, September, US Department of Justice Immigration and Naturalization Service, p.7 – Attachment 7).

2. Are there any references to the following issues relating to overseas born second-plus children:

(a) designation as ‘black children’,

A December 2005 European Country of Origin Information Seminar contains a section on the situation of “black children” which is reproduced below. However, as already noted, the report also states that generally this situation would not be experienced by Chinese returning from overseas, only by excess children who were born within China:

3.1.2. Black children (“Hei haizi”)

The word “hei” in the Chinese language means “black” or “illegal”. “Heiren” or “black people” are those, who live in a certain place without permission. Children labelled as “hei haizi” are those from parents without the right to be citizen or born without the permission of the authorities. Their economical background is insufficient. They don’t have any perspectives in education and no medical care supported by a working unit (“danwei”). Authorities often refuse to register them and to issue documents to them. This is more standard behaviour than an exception.

The measures of the government to improve their situation are still not sufficient. In October 2005 the Central Committee of the CCP discussed a new policy towards a harmonic society, among others also about increasing the income of the poor. In consequence this should also include a legal equalization – though there is no information about this new policy and its enforcement yet.

The legal question, whether black children could be considered as “particular social group” must be discussed in the context of the European legal circumstances. According to Article 10 para. 1 d of the EU Council Directive 2004/83/EC of April 29th 2004, a group shall be considered to form a particular social group, if members of that group share a common background that cannot be changed. In China the stigma of being a “black” can be reduced by marriage to a person possessing citizen’s rights. So it might be hard to imagine that “blacks” can be considered as particular social group. But even if they are disadvantaged and could be regarded as a social group, there is no special persecution of them.

There is no general ill-treatment of black children: There is no reason that this undoubtedly disadvantaged group should face a higher risk of violence than others. Black children face the same problems as other groups excluded from the average society in China (migrants, poor farmers, or for instance).

In sum, the question whether black children form a particular social group (in the meaning of the 1951 Refugee Convention) is under discussion in the different countries of reception – with different answers to it (ACCORD, HHC & UNHCR 2006, ‘China’, *10th European Country of Origin Seminar, 1-2 December 2005, Budapest*, 17 March – Attachment 5).

(b) the effect of fines and/or their non-payment on access to services such as health & education or employment in the government sector, etc.,

The material in Question 1 indicates that there is a divergence of views over whether families returning to China with extra children would be liable to pay fees. A 2004 report by the US Department of State goes into some detail over general fines and penalties in Fujian, and does state that returning families would be liable for “social compensation fees”. It states that “in interviews with visa applicants from Fujian, Consulate officers have found that many violators of the one-child policy paid fines but no evidence of forced abortion or property confiscation”:

[121] According to the FPPC [Fujian Provincial Family Planning Committee], each married couple is allowed to have one child without a birth permit. Reportedly, this has been the case since April 1, 2000. Also according to FPPC, the provincial government only imposes economic penalties on families that do not comply with the family planning law; it does not impose criminal penalties or physically coercive methods to ensure compliance. Couples with unauthorized children are not allowed to work for the provincial government.

[122] According to the FPPC, social compensation fees are based on per capita disposable income levels for rural households and per capita net income for urban households (*the 'baseline'*). The exact figure is based on country-level statistics, so the baseline varies throughout the province. For households with incomes significantly greater than the relevant income baselines, the local family planning commission can increase the social compensation fees. Social compensation fees range from the baseline or less for an unmarried couple that has a child to greater than size times the baseline for couples with four children or more and are determined by the local family planning committee in the city or country where the couple resides. In 2003, urban per capita net income in Changle City and Lianjiang County was approximately 10,050 renminbi (*about \$1,210*) and rural disposable per capita income was approximately 4,401 renminbi (*about \$530*). However, one woman with five children from Changle, Fujian, told U.S. officials in Guangzhou that she was fined a flat 50 renminbi (*about \$60*) for each child after her first child born without a special circumstance birth permit.

[123] According to the FPPC, couples unable to pay the fee immediately are allowed to pay in installments. Local family committees have the power to sue families that refuse to pay the requisite fees, but they cannot garnish wages. The FPPC asserts that parents cannot be sterilized if they are unable to refuse to pay the fee.

[124] Families are assessed social compensation fees if they return to Fujian with more than one child after having lived abroad.

[125] U.S. officials in China have not encountered any case in which a person was punished because his or her relatives either violated birth planning restrictions or had not paid fees for violating birth planning regulations, although there have been reports of such practices. Chinese family planning officials admit the possibility of 'overzealous officials' exceeding their authority, but they assert that such behavior is neither the norm nor sanctioned by the Government (US Department of State 2004, *China: Profile of Asylum Claims and Country Conditions*, June <http://www.pards.org/chinareportjune2004.doc> – Accessed 2 November – Attachment 8).

(c) denial of household registration,

As already noted, an April 2004 DFAT advice states that although there would be no penalties for returning with more than one child, there would be a problem in getting children born outside Fujian registered with the Fujian authorities, since registration is usually necessary to access state schools in Fujian. However, the evidence suggested that:

the problem of registration of children can be overcome by payment of an extra fee of several hundred or thousand RMB. In addition, in Fujian now, there are many private schools and clinics which will enrol or treat unregistered children. Their fees are not excessive by Chinese standards. Registration, while preferable when seeking work, is no longer essential in Fujian as more than 15% of Fujian's population are unregistered workers (Department of Foreign Affairs and Trade 2004, *DFAT Report 287 – RRT Information Request: CHN16609*, 22 April – Attachment 2).

DFAT goes on to state that "the registration of the children born overseas may entail an extra fee but this applies to all children born outside Fujian and the fee would not be

excessive by current day Chinese standards” (Department of Foreign Affairs and Trade 2004, *DFAT Report 287 – RRT Information Request: CHN16609*, 22 April – Attachment 2).

(d) social attitudes to them individually or to their families?

The reports already quoted suggest that societal attitudes would depend to some extent on the status of the family, with professionals and students actively welcomed back to China.

The 2005 report by the European Country of Origin Information Seminar suggests that in general, some “black children” might suffer economic disadvantage, but that they are not ill-treated as a group (ACCORD, HHC & UNHCR 2006, ‘China’, *10th European Country of Origin Seminar, 1-2 December 2005, Budapest*, 17 March – Attachment 5).

3. Other relevant developments?

Further reports are attached which provide background information on the one-child policy, although they do not mention families returning from overseas:

- A document referred to in several of the above reports is the 2002 family planning regulations of Fujian Province, the full text of which is attached (*Population and Family Planning Regulation of Fujian Province*, Adopted by the 33rd Meeting of the Standing Committee of the Ninth Provincial People’s Congress on 26 July 2002, UNHCR website – Attachment 9).
- A 2005 report by the Canadian Research Directorate looks at whether there are any recent reports of forced abortions and sterilizations in Fujian (Immigration and Refugee Board of Canada 2005, *CHN43165.E ‘China: Any reports of forced abortions and forced sterilization within the regions of Guangzhou (Guangdong Province) and Fuzhou (Fujian Province) covered by the urban hukou; any reports of an easing or a tightening of family planning regulations since 2002 (2002-2005)’*, 21 February – Attachment 10).
- The section of on population planning and related issues from the April 2006 UK Home Office report on China (UK Home Office 2006, *Country of Origin Information Report: China*, April – Attachment 11).

List of Sources Consulted

Internet Sources:

Government Information & Reports:

UK Home Office

US Department of State

Immigration and Refugee Board of Canada

United States Citizenship and Immigration Services Resource Information Center

Search Engines

Google search engine <http://www.google.com.au/>

Databases:

FACTIVA (news database)

BACIS (DIMA Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

List of Attachments

1. Department of Foreign Affairs and Trade 2004, *DFAT Report No. 327 – RRT Information Request: CHN17017*, 7 October
2. Department of Foreign Affairs and Trade 2004, *DFAT Report 287 – RRT Information Request: CHN16609*, 22 April
3. DFAT 2004, DFAT Report 317 ‘RRT Information Request: CHN16905’, 2 September
4. Immigration and Refugee Board of Canada 2005, *CHN100385.E China: Penalties faced by couples returning from overseas who are in violation of family planning regulations (2001 – 2005)*, 25 August
5. ACCORD, HHC & UNHCR 2006, ‘China’, *10th European Country of Origin Seminar, 1-2 December 2005, Budapest*, 17 March
6. United States Citizenship and Immigration Services Resource Information Center 2002, *Response CHN02002.ZNY ‘China: Information on Treatment of Returning Peasants and Workers Who Violated the One-child Family Planning Policy While Abroad’*, 12 June – <http://uscis.gov/graphics/services/asylum/ric/documentation/CHN02002.htm> – Accessed 1 October 2004
7. Greenhalgh, Susan & Winckler, Edwin 2001, *Chinese State Birth Planning In The 1990s And Beyond [PS/CHN/01.001]*, September, US Department of Justice Immigration and Naturalization Service, p.7

8. US Department of State 2004, *China: Profile of Asylum Claims and Country Conditions*, June <http://www.pards.org/chinareportjune2004.doc> – Accessed 2 November
9. *Population and Family Planning Regulation of Fujian Province*, Adopted by the 33rd Meeting of the Standing Committee of the Ninth Provincial People's Congress on 26 July 2002, UNHCR website
10. Immigration and Refugee Board of Canada 2005, *CHN43165.E 'China: Any reports of forced abortions and forced sterilization within the regions of Guangzhou (Guangdong Province) and Fuzhou (Fujian Province) covered by the urban hukou; any reports of an easing or a tightening of family planning regulations since 2002 (2002-2005)'*, 21 February
11. UK Home Office 2006, *Country of Origin Information Report: China*, April