



Australian Government
Refugee Review Tribunal

Country Advice China

China – CHN36059 – Illegitimate children
– Children born overseas – Social
compensation fee – Household registration
– State protection – Overseas students
17 February 2010

- A. What are the official procedures that need to be undertaken for children born overseas when their parents return to China? To the extent that a fee is to be paid for having a child overseas, how much is that fee and/or how is it calculated?**
- B. Do children born overseas incur any official penalties (other than family planning penalties) upon return to China on the basis of being born overseas?**
- C. Are children who are born out of wedlock and have gained household registration subject to discrimination or harm in China? If so, what is the nature of the discrimination and harm and is state protection available (both legally and in practice) in such circumstances?**
- D. If a couple were to marry after having a child out of wedlock, would this impact on the requirement to pay a social compensation fee?**
- E. Previous DFAT advice indicates that there are two circumstances in which couples returning to China are exempt from family planning fees for having an unauthorised second child. Do these exemptions also apply to individuals who have a child out of wedlock as opposed to an unauthorised second child?**
- F. In relation to the above family planning exemptions, what are the requirements for Chinese nationals who have returned to China after studying overseas? Is it relevant whether they have completed the course they undertook to complete, or is having being granted a student visa and having lived abroad on that visa sufficient?**

RESPONSE

The Department of Foreign Affairs and Trade (DFAT) was contacted in regard to these matters on 14 January 2010.¹

DFAT replied on 12 February 2010. The information is as follows:

A. What are the official procedures that need to be undertaken for children born overseas when their parents return to China? To the extent that a fee is to be paid for having a child overseas, how much is that fee and/or how is it calculated?

In order to apply for the child's household registration, the parents would be required to provide the following documentation: a Chinese translation of the child's birth

¹ RRT Country Advice Service 2010, Email to Department of Foreign Affairs and Trade 'RRT Country Information Request - CHN36059', 27 January – Attachment 1.

certificate; the parents' household registration; ID cards; passports; certificate of marriage; and a receipt issued by the local Family Planning Committee to demonstrate that a family planning fee (also known as a social compensation fee) has been paid. This list of requirements is not comprehensive; the local authority may request more information or identification on a case-by-case basis.

According to regulations published on the website of Long Hai City, Fujian Province, a marriage certificate for the parents should be prepared and presented when applying for a household registration for their child born out of wedlock.

(<http://www.longhai.gov.cn/ReadNews.asp?NewsID=243>). Post has not been able to find any information specific to Fuqing City, Fujian Province.

Most provincial and municipal governments have stated that a family planning fee would be imposed for children born out of wedlock. The State Family Planning Commission authorises local governments to establish their own criteria when imposing family planning fees in each jurisdiction. According to a regulation published by the Fujian Government in September 2002, 60 to 100 per cent of the average local income should be imposed for those who give birth to their first child out of wedlock. If the parental annual income is higher than the average level, their actual annual income will be adopted, meaning wealthier parents are charged a higher penalty. Rates have been known to be negotiable in some remote regions.

B. Do children born overseas incur any official penalties (other than family planning penalties) upon return to China on the basis of being born overseas?

Apart from family planning penalties, Post is not aware of any other penalties that may be applied on the basis of being born overseas. However, penalties are likely to be applied on the basis of being born out of wedlock.

C. Are children who are born out of wedlock and have gained household registration subject to discrimination or harm in China? If so, what is the nature of the discrimination and harm and is state protection available (both legally and in practice) in such circumstances?

According to Chinese law, a child born out of wedlock, but who has subsequently gained household registration, is entitled to the same educational rights as other children. Article 25 of the Marriage Law of the People's Republic of China (sourced from the website of the Chinese Consulate-General, New York) states that "children born out of wedlock shall enjoy the same rights as children born from married parents." The Article states that no one may harm or discriminate against them (<http://www.nyconsulate.prchina.org/eng/lsqz/laws/t42222.htm>).

However, to ensure the protection of children born out of wedlock, their legal status and the identity of their parents must be clarified. This is usually done by ensuring correct household registration for the child (which requires the parents to be married), and a written statement by the parents clarifying their relationship to the child, which should be lodged with the relevant notary office.

In remote regions, children born out of wedlock without a household registration may have experienced discrimination in the past due to traditional and cultural disapproval. However, this situation is likely to have improved. If a local culture has difficulty accepting children in these circumstances, the parents may seek relocation to another region, or migration to another country. Post cannot comment on the cultural practices or values specific to Fuqing City in relation to children born out of wedlock.

Post has been unable to locate any Chinese government agency directly responsible for the care of a child being discriminated against on the basis of being born out of wedlock, and without a household registration. The agency with the most relevant remit for this case may be the Ministry of Civil Affairs, which deals with the protection of orphans and other vulnerable groups. However, Post has no specific information on what assistance the Ministry of Civil Affairs would be able to provide in this case.

D. If a couple were to marry after having a child out of wedlock, would this impact on the requirement to pay a social compensation fee?

The key consideration is the marital status of the parents **prior** to the birth of the child. If a child is conceived out of wedlock, but the parents marry prior to the birth of the child, no social compensation fee is charged. If a mother gives birth to a child out of wedlock, a social compensation fee is likely to be charged, even if the parents subsequently get married.

The Family Planning Commission state that the intention of imposing a fee to unmarried parents who give birth to a child is to encourage marriage. Marriage is required to ensure the lawful rights of the child, such as legal household registration.

E. Previous DFAT advice indicates that there are two circumstances in which couples returning to China are exempt from family planning fees for having an unauthorised second child. Do these exemptions also apply to individuals who have a child out of wedlock as opposed to an unauthorised second child?

... [Regarding] the family planning fee ... the above exemptions do not apply to parents who have a child out of wedlock.

For information, conditions for the first exemption (Overseas Chinese) are listed below. Couples meeting any one of these criteria will be exempt from a family planning fee for the birth of their second unauthorised child:

- . Both members of the couple are overseas Chinese and the pregnancy occurs prior to their return to China;
- . Both members of the couple are overseas Chinese and have returned to China for less than 6 years;
- . Both members of the couple are overseas Chinese, their children remain in another country, and no other children from this couple live in China.

Regarding the second exemption, according to an article published on the website of the State Family Planning Commission in June 2008, if the couple (both mother and father) are overseas students and have stayed in another country for more than one year, an unauthorised second child will **not** be charged the social compensation fee when they return to China.

F. In relation to the above family planning exemptions, what are the requirements for Chinese nationals who have returned to China after studying overseas? Is it relevant whether they have completed the course they undertook to complete, or is having being granted a student visa and having lived abroad on that visa sufficient?

Post cannot find any information outlining requirements for returned students. The only available information stipulates a one year timeframe of overseas study. Post cannot comment on a requirement to complete a course of study, or simply studying abroad for a year.

Post notes that the above exemptions apply to an unauthorised second child. These exemptions do not apply to a child born out of wedlock.

Comment

The above advice is Post's understanding of Chinese law and information relating to this issue, sourced from Chinese Government websites. Post's advice should be considered a general interpretation of these laws and information.

China's Family Planning Policy is under continual revision. The Central Government has permitted provincial and municipal authorities greater levels of policy planning autonomy in relation to this issue.

The formulation, interpretation and application of family planning policies can change with little notice. Updated policies, or interpretations of policies, are usually enacted through internal documentation or edicts which are not publicly available. Chinese authorities strongly recommend that individuals contact relevant authorities to confirm regulations specific to each case.²

List of Attachments

1. RRT Country Advice Service 2010, Email to Department of Foreign Affairs and Trade 'RRT Country Information Request - CHN36059', 27 January.
2. Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1104 – China: RRT Information Request: CHN36059*, 12 February.

² Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1104 – China: RRT Information Request: CHN36059*, 12 February - Attachment 2.