



Australian Government
Refugee Review Tribunal

Country Advice

China

China – CHN38484 – Census 2010 – Out-of-plan children (black children) – unmarried mothers – children born overseas – students

27 April 2011

1. If the children of Chinese nationals are born overseas, do the children automatically have Chinese nationality, or is it necessary for them to be registered in order to obtain nationality?

Article 5 of the *Nationality Law of the People's Republic of China*¹ provides:

Any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.²

It should be noted that DFAT advice provided in February 2010 to the Australian Department of Immigration and Citizenship states:

Non-resident Chinese nationals have full citizenship rights when they return to China. For those Chinese nationals who have obtained permanent residence abroad, they are generally required to register for temporary return or apply for permanent resettlement in China with local public security bureau [sic]. However, we note that different regions have different procedures in place... Also, while **the citizenship of returning non-resident Chinese nationals is not in question**, their household registration (hukou) is more complicated and is likely to be an issue... **A returning non-resident Chinese, while he or she might be a Chinese national, is unlikely to be authorised a particular hukou locality of his or her choice.**³

Post also notes that although “entitlements under Chinese law are not necessarily guaranteed in practice”, the *Nationality Law of the People's Republic of China* remains the “relevant legislation governing the citizenship [sic] in China.”⁴

¹ Chinese Government 1980, *Nationality Law of the People's Republic of China*, (Adopted at the Third Session of the Fifth National People's Congress, promulgated by Order No. 8 of the Chairman of the Standing Committee of the National People's Congress on and effective as of September 10, 1980), 10 September

<http://www.novexc.com/nationality.html> - Accessed 7 June 2005 – Attachment

² Chinese Government 2011, ‘Nationality Law of the People's Republic of China’ Promulgated 10 September 1980, 11 February, http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content_21898800.htm - Accessed 20 April 2011, Attachment

³ Department of Foreign Affairs and Trade Australia 2010, ‘Rights of non-resident Chinese nationals and the residence application process’ 22 March, Country Information Report No. 10/14, CX241271.

⁴ Department of Foreign Affairs and Trade Australia 2010, ‘Rights of non-resident Chinese nationals and the residence application process’ 22 March, Country Information Report No. 10/14, CX241271.

2. CX252081 indicates that there is currently an amnesty on household registration for children born out of wedlock. What treatment would such children now face if they returned to China?

The article to which the question refers is, 'China to register all children', originally published on the news site *Radio Free Asia* in June 2010. The article states:

[a]uthorities in the Chinese capital have said that children born outside strict family planning quotas or out of wedlock will have an amnesty on household registrations ahead of a nationwide census in November. The census, the sixth nationwide population count under the ruling Communist Party, will run from November 2010 to June 2012, official media reported.

The deputy director of the Beijing Statistics Bureau, Gu Yanzhou, states in the same article, that "people who violated family planning policies can apply for household registration by taking the opportunities of the census."⁵

However, it would appear that the opportunity to declare out-of-plan children during the census is only available during the collection phases. According to articles in the Chinese government controlled news outlet *The China Daily*, the census was conducted in two phases. The primary phase occurred between 1st and 10th November 2010 where 6 million census takers visited more than 400 million households, "recording family information and finishing the first stage of the census"; and a secondary phase occurred between 11th and 30th November 2010 when "another round of census taking [was] launched, though on a smaller scale of 1/10,000 of the population."⁶ Therefore, the window for families to register out-of-plan children and take advantage of the amnesty would have been the period 1st-31st November 2010, depending on whether they were part of the primary or secondary collection phase.

In an article in the *China Daily* Wang Jingqiong explains the form of the census:

About 90 per cent of the people will be asked to fill in an 18-item form, covering their name, sex, ethnic group, household registration, and education; the other 10 per cent, chosen randomly, will be asked to fill in a longer 45 question form... one in 10,000 household will be visited again from November 11 to 30 with the NBS [National Bureau of Statistics] sorting and filing the data through December.⁷

The process undertaken between the end of the collection phase in December 2010 and the end of the census in June 2012 is not clear, although it is possible that the results will be released in June 2012. A report in the Chinese Government owned *People's Daily online* states:

China's sixth nationwide census will start on Nov. 1 and finish in June 2012, Guangzhou Daily reported on Tuesday.

⁵ 'China to register all children', United Nations High Commission for Refugees (UNHCR), 1 October, 2010, <http://www.unhcr.org/refworld/country...CHN..4c2b5e2926.0.html> - Accessed 21 April 2011, CX252081.

⁶ See for instance, 'China starts world's biggest census' 2010, *The Telegraph*, 1 November, <http://www.telegraph.co.uk/news/worldnews/asia/china/8101368/China-starts-worlds-biggest-census.html> - Accessed 19 April 2011, Attachment

⁷ Wang J. 2010, 'Census: Everyone counts' 2010, *China Daily*, 1 November, http://www.chinadaily.com.cn/china/2010-11/01/content_11481906.htm - Accessed 27 April 2011, Attachment

The census-takers will go into every household to collect data from Nov. 1 to Nov. 10. They will ask for private information, such as nationality, education, occupation, marital status, births, social security, death and housing.⁸

Chinese government statements encouraged parents of out-of-plan children to list these children in the census, and promised to waive or lower the substantial penalty fees associated with registration of these children under normal circumstances. A November 2010 article in the UK newspaper, *The Telegraph* reported, “the [Chinese] government has said it would lower or waive the hefty penalty fees required for those children to obtain identity cards, though so far it appears there hasn’t been much response to the limited amnesty.”⁹ In spite of this amnesty, the take up was not high, Chinese media explained that a sense of mistrust of the government was responsible for the low take up of this offer. The Chinese government owned newspaper, *China Daily* reported in August 2010 that census officials helping residents to register for the census found Chinese to be uncooperative. One census official interviewed by the *China Daily* reported that “many Chinese...slam the door in my face or refuse to open it.”¹⁰ The article goes on to note findings from an online survey which indicated that almost half of those surveyed “did not have much knowledge about the census and nearly a third admitted they feel unsafe letting census takers into their homes.”¹¹

Many Chinese believe that information they provide the census collectors will not be protected; particularly information to do with the birth of out-of-plan children, and the details of private wealth and private enterprise.¹² Attempting to allay these fears, the deputy director of Beijing’s population census “promised privacy will be protected. All the information gathered will be for research only and will be destroyed after the population statistics are compiled and released.”¹³

No information was located which indicated that unregistered out-of-plan children and their parents would experience different treatment after the census than before. Parents who had children ‘out-of-plan’ and did not register these children as part of the census process will continue to be liable for social compensation fees as discussed in September 2010 DFAT advice.¹⁴

⁸ ‘China’s 6th national census to start on Nov. 1’, 2010, *People Daily (English)*, 10 August <http://english.peopledaily.com.cn/90001/90776/90882/7099612.html> - Accessed 27 April 2011, Attachment

⁹ ‘China starts world’s biggest census’ 2010, *The Telegraph*, 1 November, <http://www.telegraph.co.uk/news/worldnews/asia/china/8101368/China-starts-worlds-biggest-census.html> – Accessed 19 April 2011, Attachment

¹⁰ Chang, L. 2010, ‘Fears over privacy confront census takers’, *China Daily*, 6 August, http://www.chinadaily.com.cn/china/2010census/2010-09/06/content_11260279_3.htm – Accessed 19 April 2011, Attachment

¹¹ Chang, L. 2010, ‘Fears over privacy confront census takers’, *China Daily*, 6 August, http://www.chinadaily.com.cn/china/2010census/2010-09/06/content_11260279_3.htm – Accessed 19 April 2011, Attachment

¹² Chang, L. 2010, ‘Fears over privacy confront census takers’, *China Daily*, 6 August, http://www.chinadaily.com.cn/china/2010census/2010-09/06/content_11260279_3.htm – Accessed 19 April 2011, Attachment

¹³ Chang, L. 2010, ‘Fears over privacy confront census takers’, *China Daily*, 6 August, http://www.chinadaily.com.cn/china/2010census/2010-09/06/content_11260279_3.htm – Accessed 19 April 2011, Attachment

¹⁴ *Country Advice* 2010, CHN37198, 14 September, Country Advice and Information Section.

The survey was administered by over 6 million census takers¹⁵, who visited residents in their homes. In order to attempt to address the significant undercount in previous census results, the data collection methodology of this census has been modified from previous years – and has counted people where they live, rather than where their hukou is registered.¹⁶

3. **Would a second child also born in Australia be exempt from the family planning laws if both parents were students?**

While a couple may have been exempted from family planning laws because they were returning from studying overseas, the fact that they had not married before the birth of their children would nullify this exemption.

DFAT advised in September 2010 that there are “a few circumstances” where couples may be exempt from family planning fines for the unauthorised birth of a second child:

for example if both the mother and father of this child are overseas Chinese students; and they have stayed in the country in which their second child was born for more than one year. This policy may be applied to most areas in China, though specific advice should be sought on a case by case basis.¹⁷ ...

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.¹⁸

In February 2010, DFAT provided information on the exemption from social compensation fees with regard to Chinese couples studying overseas¹⁹:

[A]ccording 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.

It is important to note, however, that DFAT (February 2010) additionally advises these exemptions do not apply where the couple are unmarried.²⁰ This DFAT advice also provides

¹⁵ ‘China starts world’s biggest census’ 2010, *The Telegraph*, 1 November, <http://www.telegraph.co.uk/news/worldnews/asia/china/8101368/China-starts-worlds-biggest-census.html> – Accessed 19 April 2011, Attachment

¹⁶ ‘China starts world’s biggest census’ 2010, *The Telegraph*, 1 November, <http://www.telegraph.co.uk/news/worldnews/asia/china/8101368/China-starts-worlds-biggest-census.html> – Accessed 19 April 2011, Attachment

¹⁷ DFAT 2010, *Report 1196*, 13 September, Attachment

¹⁸ Department of Foreign Affairs and Trade 2010, *DFAT Report No. 1196 – China: RRT Information Request: CHN37198*, 13 September - Attachment

¹⁹ DFAT 2010, *REPORT: 1104*, 12 February, Attachment

information on registration procedures undertaken for children born overseas when their parents return to China; and the treatment of unauthorised children after their successful hukou registration by Chinese authorities.

4. In the case where a mother is under marriageable age when her out-of-plan child is born, what fines could she incur upon return to China?

Country Advice 37751 (November 2010) provides extensive information regarding the marriageable age of men and women in China (20 yrs for women; and 22 years for men); and the legal and social consequences faced by women giving birth outside marriage, and being below the marriageable age. This Response also details the Fujian authorities' record of enforcement of financial penalties for out-of-plan births.

A table of the family planning fines applicable in Fujian is located on the China Portal website and provides current and historical fine structures for multiple out-of-plan births.

In addition, DFAT advice provided to the Tribunals in November 2010²¹ provides some information on Child Registration procedures in Fujian, the situation of single mothers and unwed and underage parents, as well as the possibilities of paying social compensation fees through instalments.

²⁰ DFAT 2010, *REPORT: 1104*, 12 February, Attachment

²¹ *Country Advice* 2010, CHN37505, 12 November, Country Advice Section.