China: Penalties faced by couples returning from overseas who are in violation of family planning regulations (2001-2005)

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Information on penalties faced by couples returning to China from overseas who are in violation of family planning regulations was scarce among the sources consulted by the Research Directorate other than provincial family planning regulations available to the Directorate in English.

Article 18 of the 2002 Guangdong family planning regulations stipulates that "[c]itizens shall be encouraged to delay marrying and bearing children, and [the principle of] couples having [just] one child shall be advocated" (PRC 25 July 2002). The provisions contained in the regulations are said to apply to returned overseas Chinese and their families, to those whose household registration is for Guangdong but who live outside of the province, and to couples whose child is born in the province, but of which one spouse is a resident of Hong Kong, Macau, or Taiwan or is a foreigner (ibid., Art. 24). Article 55 stipulates that, in cases where urban or rural residents have one more child than is permitted, a social support fee will be charged to both the mother and the father in the amount of "three to six times the average [annual] per capita net income" of residents in the local county or township (ibid., Art. 55).

Similarly, Article 20 of the 2002 Zhejiang Province Population and Family Planning Regulations states that "[w]here one spouse is an alien, a compatriot from Hong Kong, Macao or Taiwan, or an overseas Chinese, returned overseas Chinese or Chinese studying abroad, relevant State regulations shall be followed in the implementation of birth policies" (PRC 3 Sep. 2002). The Zhejiang regulations stipulate that one child for each couple is advocated. Where the provisions in these Regulations are satisfied, a couple can request the birth of a second child after necessary approval. Birth of a child is strictly prohibited in the case where the couple does not qualify under law (ibid., Art. 24).

According to Article 11 of the 2002 Fujian family planning regulations, Chinese citizens returning from overseas, including couples in which one spouse is a resident of Fujian and the other is a resident of Hong Kong or Macao, may have a second child in certain circumstances (PRC 30 July 2002). These may include:

1. The wife had already conceived upon entering the PRC for residency.
2. Both husband and wife have been residing in the PRC for less than six years, and the couple has only one child;
3. The couple's children all live overseas and no children live in the PRC with the couple.

Overseas Chinese spouses residing in Fujian Province shall be subject to clause (3) of the foregoing.

If the husband or wife is a city resident or a villager in Fujian Province, and the other spouse is a
resident of the Hong Kong Special Administrative Region or the Macau Special Administrative Region, the regulations in this article shall also apply. However, if the husband and wife have a child together after the marriage, and the spouse who is a resident of the Hong Kong Special Administrative Region or the Macau Special Administrative Region had children before that marriage, but those children are not living in the PRC, then those children do not count towards the total number of children the couple has under these regulations (ibid., Art. 11).

Likewise, Article 17 of the Henan Province Population and Family Planning Regulations adopted in 2002 stipulates that a couple may apply to have a second child if, among other things, “[b]oth spouses are returned overseas Chinese or former residents of Hong Kong, Macau or Taiwan who have relocated to the mainland, with only one child accompanying them” (PRC 30 Nov. 2002). Article 15, however, notes that ”[t]he birth of a third child is prohibited” in Henan Province (ibid.). The penalty for violating the provisions in Article 17 would be a social maintenance fee ... imposed and collected from each spouse as follows: For urban residents, the fee shall be triple the per-capita disposable income of urban residents in that locality for the previous year; for rural residents, the fine shall be triple the per-capita net income of rural residents in that locality for the previous year (ibid., Art. 38).

Article 15 of the 2003 Hunan Province Population and Family Planning Regulations contains provisions similar to the one stated in Article 17 of the Henan Province regulations (PRC 29 Nov. 2002).

According to provisions set out in Article 41 of the 2003 family planning regulations for Beijing, ”[i]f one or both spouses of childbearing age are registered household residents of another province or city, and give birth to a child in violation of these Regulations, the spouse and his or her children shall be ineligible to register their household residence in Beijing” (PRC 18 Jul. 2003). Article 17 of the regulations states that each couple can have one child, plus a second child in certain specified circumstances (ibid.).

Copies of the 2002 family planning regulations for the provinces of Guangdong and Fujian can be found in all regional documentation centres.

Information on the enforcement of each of the above-noted provincial family planning regulations was scarce among the sources consulted by the Research Directorate. 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).

The Asian Sex Gazette reported on 13 July 2005 that an expectant mother of two from Hong Kong who was visiting family in Hunan Province was told by local family planning authorities that she needed to abort her six-month-old fetus. Hong Kong officials successfully intervened to prevent the abortion and local officials later apologized to the Hong Kong resident (Asian Sex Gazette 13 July 2005).

The Economist reported on 18 December 2004 that some Chinese nationals, especially those among the urban population, choose to have a second child abroad so the child can acquire foreign citizenship and thus not be included in counts by family planning officials. Corroborating information could not be found within time constraints.

Recent media reports on population issues in China indicate that Chinese authorities are concentrating efforts on reversing a growing gender imbalance across the country by rewarding couples with daughters under the Care For Girls programme, and criminalizing sex-selective abortion (Asian Sex Gazette 21 June 2005; China Daily 27 Jan. 2005; Xinhua 22 June 2005; IPS 8 Feb. 2005). China Daily reported that, according to the fifth national census, Guangdong Province has a particularly high disparity between the number of newborn girls and boys: while the national average ratio of boys to girls was 119:100, in Guangdong, 130 boys were born for every 100 girls (27 Jan. 2005). The Chinese government has acknowledged the existence of the sex ratio imbalance and aims to have it corrected by the year 2010 (Asian Sex Gazette 21 June 2005).

According to media reports, a number of Chinese demographers and government officials are in favour of relaxing the "one-child" policy in light of a rapidly aging population, a low birth rate and the sex ratio imbalance (IPS 8 Feb. 2005; The Economist 18 Dec. 2004; Xinhua 11 Mar. 2005). Some government officials
have reportedly "hinted that the policy could be eased after 2010" while other officials and scholars have suggested that a two-child policy would be more suitable for the country (The Economist 18 Dec. 2004; see also Xinhua 11 Mar. 2005). Demographers have argued that, in any case, in rural areas of many provinces, families have been allowed to have a second child in certain circumstances (IPS 8 Feb. 2005).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

References


____. 3 September 2002. Population and Family Planning Regulations of Zhejiang Province. Translation by Office of Language Services, Department of State, United States.

____. 30 July 2002. Population and Family Planning Regulations of Fujian Province. Translation by Office of Language Services, Department of State, United States.


Additional Sources Consulted

Oral sources: Department of Immigration and Multicultural and Indigenous Affairs, Australia. One oral source did not provide information within time constraints.

Internet sites, including: International Planned Parenthood Federation, Overseas Chinese Affairs of Shanghai, Time Asia.

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