

**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.

Questions:

- 1. Is there any penalty/special requirement on return if child born overseas but not exceeding one child policy (claim child will be deprived of right to education etc.)?**
- 2. What is most recent advice re ability to depart PRC (Shanghai) on passport if a political dissident?**
- 3. What are the conditions for renewal of PRC passports in Australia?**

List of Sources Consulted

Internet Sources:

Google, Vivisimo & Copernic 2001 Personal Agent search engines
Human Rights Watch <http://www.hrw.org/>
Amnesty International <http://www.amnesty.org>
US Department of State <http://www.state.gov/>
Shanghai Chronicle <http://www.shanghaichronicle.com/>
China News Agency <http://www.chinanewsagency.com/>
China Daily <http://www.chinadaily.com.cn/english/home/index.html>
South China Morning Post <http://www.scmp.com>
Chinese Embassy in Australia <http://www.fmprc.gov.cn/eng/wjb/zwjg/2490/2496/t14502.htm>

<u>Databases:</u>		
Public	<i>FACTIVA</i>	Reuters Business Briefing
DIMIA	<i>BACIS</i>	Country Information
	<i>REFINFO</i>	IRBDC Research Responses (Canada)
RRT	<i>ISYS</i>	RRT Country Research database, including U.S. Department of State <i>Country Reports on Human Rights Practices</i> .
RRT Library	<i>FIRST</i>	RRT Library Catalogue

RESPONSE

1. Is there any penalty/special requirement on return if child born overseas but not exceeding one child policy (claim child will be deprived of right to education etc.)?

Officially, the rights of returning overseas Chinese are protected by the *Law of the Rights and Interests of Returned Overseas Chinese and the Family Members of Overseas Chinese*, effective as of 1 January 1991.

Article 3 of this Act states: "Returned overseas Chinese and the family members of overseas Chinese shall be entitled to the citizen's rights prescribed by the Constitution and the law and at the same time shall perform the citizen's duties prescribed by the Constitution and the law. No organization or individual may discriminate against them." (UK Home Office Science and Research Group 2005, 'Country of Origin Information Report October 2005 China', paragraph 6.413, UK Home Office website, November – Accessed 15 November 2005 – Attachment 1)

DFAT has provided information on the registration of children returning to China after having been born overseas. The following Country Information Report outlines the situation for children born in Australia to Chinese studying abroad. :

Circular Issued By State Family Planning Commission And State Education Commission On The Issue Of Births Outside The Plan By Chinese People Studying Abroad (Number 272 of 1989, 18 Nov.1989)

ii. After people who have given birth in excess of the plan return to China, they should be allowed to obtain household registration for their children by presenting a certificate issued by the embassy (or consulate) and the birth certificate issued in the country of birth, and these kinds of birth need not be counted for the purpose of their work units birth quota.

iii. After people who have given birth in excess of the plan return to China, their work units, in accordance with the certificate issued by the embassy (or consulate), must not punish them or impose a fine on them." (DFAT advice (DIMA Country Information Service 1998, *Country Information Report No. 308/98 - China: CIS Request No. CHN-AB890: Returnees who have Children Abroad*, (sourced from DFAT advice of 30 July), 4 August – Attachment 2)

Other DFAT advice also contains an articulation of the situation for such children of Chinese families returned from abroad with more than one child:

We are unaware of any difficulties arising for people returning from overseas with more than one child. Families with more than one child (for whatever reason) are common in China. The objective of all the policies and regulations is to deter, to the extent possible, a high birthrate. Once births have occurred, our impression is that pragmatism would take precedence. (DIMA Country Information Service 2000, *Country Information Report No. 554/00 - China: Treatment of 'Black Children'*, (sourced from DFAT advice of 3 November 2000), 7 November - Attachment 3)

Susan Greenhalgh, a US expert on Chinese family planning policies, and Edwin Winkler produced a study for the U.S. Immigration and Naturalization which states:

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. (p.7.) Service (Greenhalgh, Susan and Winkler, Edwin A, 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Resource Information Center, Immigration and Naturalization Service (INS), US Department of Justice, Perspective Series, September – Attachment 4)

In 2003 DFAT provided an update to the situation of children whose birth was not authorised. DFAT's answer to the question "As a 'black child' born in contravention of the Chinese Government's family planning policy, is the applicant at risk of being denied access to basic rights commonly available to other children living in Tainjin? What penalties is the child likely to face?" was:

No. 'Black children' are unregistered children, whose birth may or may not violate family planning regulations. Unregistered children are not listed on their parents' household registration documents (*hukou*) and for this reason face administrative difficulties in accessing government services (eg. Health care and education) for which possession of a valid *hukou* is a prerequisite. Health and education services can be obtained privately in Tianjin without a *hukou*, but at a higher cost than a registered child might face. An unregistered child or an 'out of plan' child would not him or herself face any penalty, although his or her parents might face administrative sanctions. China (DIMA Country Information Service 2003, *Country Information Report No. 39/03* – 'Black children in China', (sourced from DFAT advice of 27 February 2003), 3 March - Attachment 5)

2. What is most recent advice re ability to depart PRC (Shanghai) on passport if a political dissident?

No information was located specifically referring to departing PRC from Shanghai.

Regarding exit from China as a whole, the available sources indicate that freedom to travel overseas is generally the case, although passports are difficult to obtain for certain classes of dissident. Section 2d (Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation) of the most recent US Department of State country report states:

The Government permitted legal emigration and foreign travel for most citizens. Passports were increasingly easy to obtain in most places, although those whom the Government deemed to be threats, including religious leaders, political dissidents, and some ethnic minority members continued to have difficulty obtaining passports. (US Department of State 2005, *Country Reports on Human Rights Practices 2004, China*, 28 February, Section 2d <http://www.state.gov/g/drl/rls/hrrpt/2004/41640.htm> - Attachment 6)

The types of religious and political dissidents who had trouble obtaining a passport in 2004 are described in a little more detail in the same section of the US report:

There were reports that some academics faced travel restrictions around the year's sensitive anniversaries, particularly the June 4 anniversary of the 1989 Tiananmen Square massacre, and there were instances in which the authorities refused to issue passports or visas on apparent political grounds. Members of underground churches sometimes were refused passports and other necessary travel documents. Some Falun Gong members also had difficulty in obtaining passports. On June 1, Dr. Jiang Yanyong and his wife were detained while en route to pick up a visa to travel abroad to visit their daughter. They were held for 7 and 2 weeks, respectively, because he wrote to government leaders requesting an official reassessment of the Tiananmen massacre. (US

Department of State 2005, *Country Reports on Human Rights Practices 2004, China*, 28 February
<http://www.state.gov/g/drl/rls/hrrpt/2004/41640.htm> - Attachment 6)

The previous year's US report specifically mentions that business travellers could obtain passports "relatively easily".

The Government permitted legal emigration and foreign travel for most citizens. Passports were increasingly easy to obtain in most places, although those whom the Government deemed to be threats, including religious leaders, political dissidents, and some ethnic minority members continued to have difficulty obtaining passports.

...Many local governments abolished regulations requiring residents to obtain written permission from police and employers before applying for a passport. The Government continued to use political attitudes as criteria for selecting persons for government-sponsored study abroad; however, the Government did not control privately sponsored students, who constituted the majority of citizens studying abroad. Business travellers who wished to go abroad could obtain passports relatively easily. (US Department of State 2004, *Country Report on Human Rights Practices for 2003*, 25 February, Section 2d <http://www.state.gov/g/drl/rls/hrrpt/2003/27768.htm> - Attachment 7)

In addition, there have been reports of known dissidents receiving passports to leave the country. For instance, in 1997:

During the year, the Government showed greater willingness to allow dissidents to leave the country. In July Tong Yi, the former secretary of Wei Jingsheng, was issued a passport and allowed to travel to New York, where she enrolled at Columbia University. Authorities also issued a passport and exit permit to dissident Chen Xiaoping. He is currently at Harvard University. Democracy activist Xu Shuliang was also issued a passport in July. Shanghai dissident Bao Ge was granted a visa and exit permit and was allowed to leave China in October. Wei Jingsheng was granted a medical parole and was allowed to leave the country for medical treatment in November. (US Department of State 1998, 'Country Report on Human Rights Practices for 1997', US DoS website, 30 January <http://www.svdc.org/files/china1997.html> - Attachment 8)

And in 2001:

A Shanghai-based dissident left for a life of exile in the United States yesterday after receiving permission to leave from public security officials, a Hong Kong-based human rights group said. (Staff reporter 2001, 'Veteran dissident leaves for life of exile', South China Morning Post website, 8 September - Accessed 2 February 2006 – Attachment 9)

In November 2001 the BBC reported that the Ministry of Public Security had announced major reforms to the current system of exit-entry administration to bring China in line with requirements for China's accession to the World Trade Organisation. (2001, 'China to reform entry-exit procedures to adapt to WTO', *BBC Monitoring Asia Pacific*, 21 November - Accessed 2 February 2006 – Attachment 10)

However, there are also reports indicating that prominent dissidents have been unable to obtain a passport. For instance, in 2003:

Yang Jianli, a prominent dissident and permanent U.S. resident, was detained on April 26 after having entered China a week earlier on a friend's passport. The Chinese government had refused to renew his own passport. (Human Rights Watch 2003, 'Human Rights Watch Report: China', <http://www.hrw.org/wr2k3/asia4.html> - Accessed 30 January 2006 – Attachment 11)

Also in 2003:

Yan Jun, a graduate of Shanxi Province Normal School, is 32 years old. He was sent to prison on December 8, 2003, and charged with the crime of "instigation and subversion of state power," because he published articles on the internet that criticized China's human rights, called for reevaluating the Tiananmen Massacre, releasing former Chinese Premier Zhao Ziyang, and releasing media control and the ban for freedom of assembly and independent union. After he was released from jail on April 4, 2005, he was deprived of his citizen's rights, could not longer work, and was deprived of the right to depart the country or obtain a passport. (Wu, Tsen-Hsie 2005, 'Dissident from China jumps boat for freedom', The Epoch Times, 6 January, <http://english.epochtimes.com/news/6-1-6/36665.html> - Accessed 30 January 2006 – Attachment 12)

More recently, following the defection in May 2005 of a political affairs counsellor at the Chinese Consulate in Sydney and his applying for asylum in Australia, the media reported that China's rules for issuing and renewing passports was becoming more stringent. An article in June 2005 reports that such a move by the Chinese government indicates:

... a dramatic shift in policy and comes amid signs that the ruling Communist Party is tightening its grip on many sectors of society and daily life as greater economic freedoms have eroded the power of the Government over its people. An initial application for a passport in China has been simplified as the country has opened up to the outside world in recent years and passport renewal has become virtually automatic. However, the new rules apply even to officials wanting only to renew a passport. (Macartney, Jane 2005, 'Defections spur China to passport clampdown', The Times, 10 June – Accessed 1 February 2006 – Attachment 13)

3. What are the conditions for renewal of PRC passports in Australia?

The current conditions for the renewal of a Chinese passport in Australia are not provided in the Consular and Visa section of the website of the Chinese Embassy in Australia.

In 1992 DFAT advised that:

Advice was sought from RIA on the PRC embassy's policy concerning the renewal of passports. RIA stated that it was not possible to conclude that a person with strong or weak claims would have difficulty renewing their passport. As far as they are aware the PRC embassy will renew passports of any PRC national.

... In the case of Government sponsored students who have overstayed their agreed study period, their official passports are not renewed, they are provided with a general PSB issue passport. (DFAT 1992 'Renewal of passports in Australia by Chinese nationals', 25 May, Request Number: CHN00133, CIS PAPERS. Attachment 14)

In 1994 DFAT provided advice on the refusal of Chinese consulates to issue or renew passports in their *Country Profile: China* of June 1994:

3.3.3 Certificates of Identity (Cs of I)

3.3.3.1 The Department of Foreign Affairs and Trade as the passport issuing agency of the Australian Government receives many requests for the issue of a travel document called a Certificate of Identity (C of I). This travel document is issued to persons who are not Australian citizens, who are about to leave Australia and who is stateless or cannot obtain a passport of their country of nationality. (Cited in RRT Research Response CHN16752 of 21 May 2004 – Attachment 15)

In 2003, The Chinese Ministry of Foreign Affairs provided the following formal advice on passport renewal (Ministry translation):

According to relevant Chinese law, all Chinese citizens overseas can apply for passport renewal at Chinese embassies and consulates. For that small minority of persons who take part in activities which jeopardise national security, honour and national interest, Chinese embassies and consulates will not extend their passports; if they correct their mistakes, stop the activities listed above and perform the duties of citizens, they can still obtain permission to have their passports renewed or extended.

... The Ministry of Foreign Affairs (MFA) has advised us informally that china does not recognise “refugee status” accorded by other countries. MFA advises that Chinese embassies and consulates abroad cannot therefore refuse to renew the passports of otherwise eligible Chinese applicants on the grounds that applicants have also applied for refugee status in Australia.

DFAT may issue certificates of identity to non-citizens who are about to leave Australia, and who are stateless or unable to obtain a passport from a consular representative of their own country. Chinese embassies and consulates may issue travel permits to Chinese citizens who may not meet the requirements for issue of a passport (similar to our documents of identity), who need them quickly, or who are being repatriated to China. Travel permits may have up to 12 months validity, and may be issued subject to conditions (e.g. one way only or one month validity only).

Travel permits are quick to obtain, and are cheaper than normal passports. Children under 16 may have their own passports, or travel on their parents’ passport, but travel permits can be obtained within China as a cheaper alternative. A citizen who has lost his or her passport abroad can be issued with a travel permit on presentation of non-original identity documents – the issuing authority will check the documents’ validity with the originating body. Normally, however, such a person would be issued with a new passport valid for five years. (DFAT, 2003, DFAT Report 00221 – ‘RRT Information Request: CHN14995’, 13 January – Attachment 16)

General information on the renewal of the passports of Chinese nationals outside China was located on the website of the Embassy of the Peoples Republic of China.

Chinese nationals in foreign countries may go to Chinese diplomatic/consular missions and authorized institutions for passport-concerned applications, such as renewal, endorsement or page-adding, etc. The applicant is required to go to the embassy or consulate or other authorized institutions in person to submit the application, fill out application forms, interview with consular officers, and submit relevant supplementary documents. The following documents are required:

- Chinese passport or certificates of the applicant’s Chinese nationality, in both original and photostat copy;
- Valid certificate of residence issued by the foreign government or other identity certificate of the applicant’s lawful status;
- Completed application form;
- Other relevant supplementary documents required by the consular officers. (Chinese Embassy in the Hellenic Republic 2004, ‘Chinese Passports and Other Travel Documents’, Chinese Embassy website, 3 August - Attachment 17)

There have been reported instances of Chinese officials in Australia refusing to renew the passports of certain people. Falun Gong practitioners are the specific group most cited. For instance, in September 2005 a NSW paper reported that:

A Hornsby mother and her 15-year-old daughter have been unable to renew their Chinese passports and return to China. The family says the passports have been denied because they practise Falun Gong. (2005, 'Beyond belief for a young Falun Gong follower, a trip to China is ...', Hornsby and Upper North Shore Advocate, 16 September, p.1 – Accessed 6 February 2006 – Attachment 18)

List of Attachments

1. UK Home Office Science and Research Group 2005, 'Country of Origin Information Report October 2005 China', paragraph 6.413, UK Home Office website, November – Accessed 15 November 2005
2. DFAT advice (DIMA Country Information Service 1998, *Country Information Report No. 308/98 - China: CIS Request No. CHN-AB890: Returnees who have Children Abroad*, (sourced from DFAT advice of 30 July), 4 August. (CISNET China CX31344)
3. DIMA Country Information Service 2000, *Country Information Report No. 554/00 - China: Treatment of 'Black Children'*, (sourced from DFAT advice of 3 November 2000), 7 November (CISNET China CX46100)
4. Greenhalgh, Susan and Winkler, Edwin A, 2001, *Chinese State Birth Planning in the 1990s and Beyond*, Resource Information Center, Immigration and Naturalization Service (INS), US Department of Justice, Perspective Series, September –
5. DIMA Country Information Service 2003, *Country Information Report No. 39/03 – 'Black children in China'*, (sourced from DFAT advice of 27 February 2003), 3 March. (CISNET China CX73769)
6. US Department of State 2005, *Country Reports on Human Rights Practices 2004, China*, 28 February, Section 2d (<http://www.state.gov/g/drl/rls/hrrpt/2004/41640.htm>)
7. US Department of State 2004, *Country Report on Human Rights Practices for 2003*, 25 February, Section 2d (<http://www.state.gov/g/drl/rls/hrrpt/2003/27768.htm>)
8. US Department of State 1998, 'Country Report on Human Rights Practices for 1997', US DoS website, 30 January (<http://www.svdc.org/files/china1997.html>)
9. Staff reporter 2001, 'Veteran dissident leaves for life of exile, South China Morning Post website, 8 September - Accessed 2 February 2006 (FACTIVA)
10. 2001, 'China to reform entry-exit procedures to adapt to WTO', *BBC Monitoring Asia Pacific*, 21 November - Accessed 2 February 2006 (FACTIVA)
11. Human Rights Watch 2003, 'Human Rights Watch Report: China' - Accessed 30 January 2006 (<http://www.hrw.org/wr2k3/asia4.html>)
12. Wu, Tsen-Hsie 2005, 'Dissident from China jumps boat for freedom', *The Epoch Times*, 6 January - Accessed 30 January 2006
13. Macartney, Jane 2005, 'Defections spur China to passport clampdown', *The Times*, 10 June – Accessed 1 February 2006 (FACTIVA)

14. DFAT 1992 'Renewal of passports in Australia by Chinese nationals', 25 May, Request Number: CHN00133, CIS PAPERS.
15. RRT Research Response CHN16752 of 21 May 2004.
16. DFAT, 2003, DFAT Report 00221 – 'RRT Information Request: CHN14995', 13 January
17. Chinese Embassy in the Hellenic Republic 2004, 'Chinese passports and Other Travel Documents', Chinese Embassy website, 3 August - Accessed 6 February 2006 (<http://gr.china-embassy.org/eng/lsw/hz/t146143.htm>)
18. 2005, 'Beyond belief for a young Falun Gong follower, a trip to China is ...', Hornsby and Upper North Shore Advocate, 16 September, p.1 – Accessed 6 February 2006 (FACTIVA)