



Australian Government
Refugee Review Tribunal

Country Advice

China

China – CHN38129 – Fujian Province –
Family planning – Social compensation
fees – Unmarried couples – Underage
fathers – Children born overseas –

Passports

25 February 2011

Please advise on the following questions in relation to an unmarried couple from Fuqing, Fujian Province, who had their first child (only) while the father was underage and have subsequently had a second child overseas.

1. What is the penalty for the first child?

Estimated family plan fines payable by a couple in these circumstances, for the first child born, are:

Urban couple

Minimum fine RMB 34187

Maximum fine RMB 52024

Rural Couple

Minimum fine RMB 14858

Maximum fine RMB 22610

The most common form of penalty under China's family planning legislation is the levying of a 'social compensation' fee. The structure for these fees is set out in the regulations of provincial governments and varies depending on the circumstances of the couple¹.

In general, couples are allowed one child without being fined; however, they must meet requirements including being married. It is forbidden for a couple to give birth 'before the stipulated time' under Article 14 of the *Population and Planning Regulation* for Fujian Province. Article 14 states:

¹ *Population and Family Planning Regulation of Fujian Province* (Promulgated 26 July 2002, Effective 1 September 2002), UNHCR website – Attachment 1

Under any of the following circumstances, the child born is regarded as born before the stipulated time by the Regulation:

(1) Those who give birth to a child before they get married (including those who become pregnant before they reach legally marrying age).²

Article 6 of the Marriage Law of the People's Republic of China states:

Article 6 No marriage may be contracted before the man has reached 22 years of age and the woman 20 years of age. Late marriage and late childbirth shall be encouraged.³

If the father was under 22 years old at the birth of the first child, the birth is considered to be unapproved under Chinese law and the couple subject to penalty as per Article 39 of the Fujian regulations which reads:

Anyone who violates this Regulation by one of the acts listed below shall be ordered to pay the corresponding number of times of the average annual disposable income of the urban residents or the net average annual income of the rural peasants of the county in the previous year when the child is born in violation of this regulation as social compensation fee by family planning administrative department of the county or by township people's government or urban neighbourhood office appointed by such administrative department:

(1) A social compensation of zero point six to one time shall be imposed on those who give birth to a child ahead of the schedule.⁴

Any couple who give birth to a child out of wedlock is subject to additional fines under Article 39(3) which states:

(3) A social compensation of four to six times shall be imposed on those who give birth to a child born out of an extramarital affair. A much more heavy social compensation fee shall be imposed on those who give birth to the second child born out of an extramarital affair.⁵

Note that the UNHCR translation of the Population and Family Planning Regulation of Fujian Province Chinese interprets the characters (婚外生育一个子女的) in the original document⁶ as 'extramarital affair'. These characters are translated in similar documents as 'outside marriage'.

² *Population and Family Planning Regulation of Fujian Province* (Promulgated 26 July 2002, Effective 1 September 2002), UNHCR website – Attachment 1

³ National Working Committee on Children and Women under the State Council 2008, *Marriage Law of the People's Republic of China*, 9 April, <http://www.nwccw.gov.cn/html/41/n-140641.html> - Accessed 24 February 2011 – Attachment 2.

⁴ *Population and Family Planning Regulation of Fujian Province* (Promulgated 26 July 2002, Effective 1 September 2002), UNHCR website – Attachment 1

⁵ *Population and Family Planning Regulation of Fujian Province* (Promulgated 26 July 2002, Effective 1 September 2002), UNHCR website – Attachment 1

⁶ Fujian Government 2006, *Fujian Family Planning Regulations (in Chinese)*, 18 December, http://www.fjjsw.gov.cn:8080/html/1/243/1530_2008117844.html, - Accessed 23 February 2011 – Attachment 3.

Statistics released by the Fujian government lists the average annual disposable income for urban households in 2000 as RMB 7432.⁷ Applying the fee structure listed provides the following penalties for an unmarried couple:

Minimum fine: RMB 34187 = (7432x0.6) + (7432x4)

Maximum fine: RMB 52024 = (7432x1) + (7432x6)

The recorded per capita net income for rural households was RMB 3230 for 2000⁸. Applying the fee structure listed provides the following penalties:

Minimum fine RMB 14858 = (3230x0.6) + (3230x4)

Maximum fine RMB 22610 = (3230x1) + (3230x6)

Fujian law makes it possible to levy larger fines if the income of a couple is higher than the average income; the actual income should be used as the basis for calculating fines. This would mean the penalty would be at least 4 to 6 times the actual income of the parents.

2. What is the penalty for the second child?

It is not clear if children born outside of China are subject to the penalties set out in the Fujian family planning legislation. If penalties were to be imposed, the estimate fines for a couple having a second child out of wedlock are:

Urban couple

Minimum fine RMB 73926

Maximum fine RMB 110889

Rural Couple

Minimum fine RMB 26700

Maximum fine RMB 40050

Children born outside of China may not be subject to the penalties set out in the Fujian family planning legislation. The Australian Department of Foreign Affairs and Trade (DFAT) advised in 2004 that:

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.⁹

⁷ Fujian Government 2010, *Per Capita Annual Income of Urban and Rural Households*, Fujian government website, <http://www.stats-fj.gov.cn/tongjijianjian/dz10/en/html/0601.htm> - Accessed 23 February 2011 – Attachment 4.

⁸ Fujian Government 2010, *Per Capita Annual Income of Urban and Rural Households*, Fujian government website, <http://www.stats-fj.gov.cn/tongjijianjian/dz10/en/html/0601.htm> - Accessed 23 February 2011 – Attachment 4.

⁹ Department of Foreign Affairs and Trade 2004, DFAT Report 287 – RRT Information Request: CHN16609, 22 April – Attachment 5.

No Chinese sources or legislation were located to confirm that the non-imposition of penalties to returning Chinese is official policy or uniformly applied. DFAT also advised in other provinces, social compensation fees were levied on returning citizens who did not meet specific requirements (e.g. being students living outside of China for less than six years).

Sources consulted on the subject noted a lack of available information and offered differing opinions. A 2001 *USCIS Resource Information Center* report stated that couples who have an 'illegal' child overseas are not subject to penalty on returning to China 'in many if not most cases'.¹⁰ It should be noted that this advice primarily concerned students rather than urban workers or rural peasants. In contrast, in the same document, a retired China analyst at the US census bureau said there was no reason to expect that illegal births that took place overseas would be treated any differently to those taking place in China. He noted that to do otherwise would undermine the aims of the legislation.

Generally, Chinese couples are not permitted to have a second child. The legislation lists some instances in which case a second child is allowed. Article 10 states that:

A rural couple may apply for permission to give birth to a second child under any one of the following circumstances:

- (1) Either husband or wife is the only child in the family;
- (2) Husband's brothers have no children at all and are all sterile;
- (3) The wife has not brother and has one only sister and the husband goes to reside with the wife's family and support the wife's parents;
- (4) Both husband and wife live in a township whose population density is less than fifty people per square kilometre and the average arable land for each person is more than two mu or the average forest land for each person is over thirty mu;
- (5) The couple has got only one daughter.¹¹

It is noted that subsection (5) does not apply in this case and that the couple does not appear to have applied for permission for a second child.

The social planning fee for a second child (the first additional child) is two to three times the annual income of the couple.¹² A couple not married at the time of the time of a child's birth are liable for additional penalties. Article 39 of the *Fujian Population and Planning Regulation* states that a second child born out of wedlock should be subject to a 'much heavier fee' than the four to six times penalty for the first instance.¹³ The maximum limit for

¹⁰ USCIS Resource Information Center 2004, 'China: Information on Return to China After Having Children Abroad', 21 January <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f88b361cfb98d010VgnVCM10000048f3d6a1RCRD&vgnextchannel=d2d1e89390b5d010VgnVCM10000048f3d6a1RCRD> - Accessed 24 February 2011 – Attachment 6.

¹¹ *Population and Family Planning Regulation of Fujian Province* (Promulgated 26 July 2002, Effective 1 September 2002), UNHCR website – Attachment 1

¹² *Population and Family Planning Regulation of Fujian Province* (Promulgated 26 July 2002, Effective 1 September 2002, UNHCR website – Attachment 1

¹³ *Population and Family Planning Regulation of Fujian Province* (Promulgated 26 July 2002, Effective 1 September 2002, UNHCR website – Attachment 1

such a penalty is not stated although, as a guide, a 2010 document issued by Chongqing Province allows for a maximum fine of RMB 250,000.¹⁴

Fujian province statistics give the disposable income for urban couples as RMB 12321.¹⁵ This would mean the estimated fines for this breach would be calculated to be an amount in excess of:

$$\text{Minimum fine RMB } 73926 = (12321 \times 2) + (12321 \times 4)$$

$$\text{Maximum fine RMB } 110889 = (12321 \times 3) + (12321 \times 6)$$

The recorded per capita net income for rural households was RMB 4450 for 2005.¹⁶ This would mean the estimated fines for this breach would be an amount in excess of:

$$\text{Minimum fine RMB } 26700 = (4450 \times 2) + (4450 \times 4)$$

$$\text{Maximum fine RMB } 40050 = (4450 \times 3) + (4450 \times 6)$$

As for the first child, the regulations allow for the base fine amount to be calculated using the couple's actual income if this is in excess of the average income. The legislation does not indicate how or if foreign income would be considered for these purposes.

3. Could the parents get valid passports in Australia on the basis of ID documents only?

Based on official documentation from the Chinese authorities, the parents would have difficulty in obtaining passports from the Chinese embassy/consulate. The Chinese Ministry of Foreign Affairs lists the following requirements for applying for a passport in an overseas consulate or embassy:

- Chinese passport or certificate of nationality;
- Evidence of the lawful status of the applicant in their present country of residence;
- Completed application form;
- Other relevant records requested by official.¹⁷

The same policy lists an applicant being unable to prove their identity as grounds for refusing to issue a passport. It is unclear whether an identity card held by the parents is sufficient to meet this requirement. The lack of a valid passport would be a barrier in the parents obtaining a passport from a Chinese embassy.

¹⁴ 'Online debate focuses on punishment for out-of-wedlock births in Chongqing' 2010, *Global Times*, 17 September, <http://china.globaltimes.cn/society/2010-09/574639.html> - Accessed 24 February 2011 – Attachment 7.

¹⁵ Fujian Government 2010, *Per Capita Annual Income of Urban and Rural Households*, Fujian government website, <http://www.stats-fj.gov.cn/tongjiniannjian/dz10/en/html/0601.htm> - Accessed 23 February 2011 – Attachment 4.

¹⁶ Fujian Government 2010, *Per Capita Annual Income of Urban and Rural Households*, Fujian government website, <http://www.stats-fj.gov.cn/tongjiniannjian/dz10/en/html/0601.htm> - Accessed 23 February 2011 – Attachment 4.

¹⁷ Ministry of Foreign Affairs of the People's Republic of China 2002, *Chinese Passports and Other Travel Documents*, 18 April, <http://www.fmprc.gov.cn/eng/3625/3629/t18321.htm> - Accessed 24 February 2011 – Attachment 8.

As an alternative to travelling to China on a Chinese passport, the couple would be eligible to apply for a travel permit. This document allows the holder to make a single (one way) trip to China within a year of issue.¹⁸ The Chinese Foreign Affairs website states that a travel permit can be issued to a Chinese citizen who has lost their passport or needs to return to China quickly. The requirements for obtaining a travel permit are not listed.

4. If the parents marry now, could they avoid the social compensation fee for the first child?

No. There is no provision listed in the legislation to indicate that getting married now would mitigate the fact a couple were not married at the time their children were born. Article 14 of the Fujian *Population and Planning Regulation* states that any birth before the marriage of the child's parents would be considered 'ahead of schedule' and lack the required permissions.¹⁹ Chinese law does not allow for a retrospective marriage to validate events that took place before a marriage. In any case this would not alter the fact the father was below the legal age for marriage in China.

Attachments

1. Population and Family Planning Regulation of Fujian Province (Promulgated 26 July 2002, Effective 1 September 2002), UNHCR website.
2. National Working Committee on Children and Women under the State Council 2008, Marriage Law of the People's Republic of China, 9 April, <http://www.nwccw.gov.cn/html/41/n-140641.html> - Accessed 24 February 2011.
3. Fujian Government 2006, http://www.fjjsw.gov.cn:8080/html/1/243/1530_2008117844.html, 18 December - Accessed 23 February 2011.
4. Fujian Government 2010, Per Capita Annual Income of Urban and Rural Households, Fujian government website, <http://www.stats-fj.gov.cn/tongjिनianjian/dz10/en/html/0601.htm> - Accessed 23 February 2011.
5. Department of Foreign Affairs and Trade 2004, DFAT Report 287 – RRT Information Request: CHN16609, 22 April.
6. USCIS Resource Information Center 2004, 'China: Information on Return to China After Having Children Abroad', 21 January <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=f88b361cfb98d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=d2d1e89390b5d010VgnVCM10000048f3d6a1RCRD> - Accessed 24 February 2011.
7. Online debate focuses on punishment for out-of-wedlock births in Chongqing' 2010, Global Times, 17 September, <http://china.globaltimes.cn/society/2010-09/574639.html> - Accessed 24 February 2011.

¹⁸ Ministry of Foreign Affairs of the People's Republic of China 2002, *Chinese Passports and Other Travel Documents*, 18 April, <http://www.fmprc.gov.cn/eng/3625/3629/t18321.htm> - Accessed 24 February 2011 – Attachment 8.

¹⁹ *Population and Family Planning Regulation of Fujian Province* (Promulgated 26 July 2002, Effective 1 September 2002, UNHCR website – Attachment 1

8. Ministry of Foreign Affairs of the People's Republic of China 2002, Chinese Passports and Other Travel Documents, 18 April,
<http://www.fmprc.gov.cn/eng/3625/3629/t18321.htm> - Accessed 24 February 2011.