

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Questions

- 1. Is there information that family members of non-returnees face discrimination or ill-treatment in China if and when they return?**
- 2. Do family members, who were children at the time that the parent came to Australia, face discrimination or ill-treatment if and when they return to China?**
- 3. Is the situation different if the family member is an adult when they return to China?**

RESPONSE

- 1. Is there information that family members of non-returnees face discrimination or ill-treatment in China if and when they return?**

No penalty was found in the sources consulted either for not returning to China or for being the relatives of people who do not return. No reports were found of cases of ill-treatment of family members of non-returnees, although this could happen for the family members of some high-profile dissidents living abroad. There appears to be no provision in the *Criminal Law of the PRC* which considers failure to return to the PRC from an overseas trip as a criminal offense, unless the person concerned was a government official who defected to a foreign government (see below). Nor is there any provision in the *Exit and Entry Management Law Implementation Regulations* of the PRC which provides a penalty (either fine, detention or imprisonment) for not returning or for being the relative of a non-returnee.

Section 3, Chapter VI of *The Criminal Law of the People's Republic of China 1997* provides a number of penalties for assisting people to “secretly cross the national boundary” at Articles 318, 319, 321 and 322, for providing fake and altered exit and entry documents at Article 320 and for illegal emigration at Article 322, but no penalties for those who remain abroad or for their family members (*Criminal Law of the People's Republic of China*, (Adopted on July 1, 1979 and amended on March 14, 1997), Chinalaw website – Attachment 1). Article 109 is

the only provision relating to Chinese living or travelling abroad, and even this extreme case does not mention penalties for family members:

Article 109 Any State functionary who, while discharging his official duties at home or abroad, leaves his post without permission and defects to another country, which endangers the security of the People's Republic of China, shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years.

Articles 9 to 13 of *The Detailed People's Republic of China Exit and Entry Management Law Implementation Regulations* allow for Chinese citizens who now reside outside China to legally re-enter China for a visit, resettlement or work (*Detailed People's Republic of China Exit and Entry Management Law Implementation Regulations 1994*, (Amendment of Regulations of 12/86) – Attachment 2). Article 22 allows for the cancellation of a passport on the return of certain people:

Article 22

The People's Republic of China passport, Exit and Entry Document will be cancelled or declared as invalid if any of the following situations applies to the holder:

- (1) The holder has been sent back to the Country because he has entered or stayed in the country of destiny illegally;
- (2) The citizen has been using the passport to deceive and beguile people;
- (3) The holder has involved in activities that are endangering the safety, the honour and the interest of the Country.

The US Department of State *Country Reports on Human Rights Practices 2006 – China* notes that political dissidents may not be allowed to repatriate or may face arrest on return, but does not mention other problems for returnees or relatives of people absent for a long period. The report also notes that emigration from China is legal:

The government permitted legal emigration and foreign travel for most citizens. Most citizens could obtain passports, although those whom the government deemed threats, including religious leaders, political dissidents, and some ethnic minority members continued to have difficulty obtaining passports ...

The law neither provides for a citizen's right to repatriate nor otherwise addresses exile. The government continued to refuse reentry to numerous citizens who were considered dissidents, Falun Gong activists, or troublemakers. Although some dissidents living abroad have been allowed to return, dissidents released on medical parole and allowed to leave the country often were effectively exiled. Activists residing abroad have been imprisoned upon their return to the country.

(US Department of State 2007, *Country Reports on Human Rights Practices 2006 – China*, 6 March, Sec. 2d 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' – Attachment 3)

A 2004 article by the IHLO (Hong Kong Liaison Office of the international trade union movement) notes that:

Since “opening up”, the Chinese government no longer regards leaving China in search of work as an act of traitorous betrayal (pantao). Unemployment has been recognised as a problem and the exporting of labour abroad is seen as one of the solutions. People still leave China for rights-related reasons, but the overwhelming majority now leave for the “neutral” reasons of education and work.

(‘A brief overview of labour export from China: A growth industry under WTO rules?’ 2004, IHLO (Hong Kong Liaison Office of the international trade union movement) website <http://www.ihlo.org/LRC/G/000105.html> – Accessed 10 August 2007 – Attachment 4)

The Chinese government tries to attract back Chinese students who have studied abroad and offers rewards for those who return to work in China, (see Zweig, David 2006, ‘Learning to compete: China’s efforts to encourage a “reverse brain drain”’, in Kuptsch and Pang, ed., *Competing for Global Talent* (International Institute for Labour Studies, Geneva), pp. 187-213 <http://www.cctr.ust.hk/articles/pdf/LearningtoCompete.pdf> – Accessed 14 August 2007 – Attachment 5) but no reports were found of the punishment of family members of students who have not returned.

In relation to the Chinese government attitude to persons who have sought asylum in Australia, a process which often took a number of years in the past, DFAT advised in September 2006:

A.1. It is not possible to comment definitively on how Chinese authorities would treat returnees to China who were failed asylum seekers. It would be very likely that Chinese authorities would interview them and might keep them under surveillance and detain them for a short period. Any further action would depend on the circumstances of the individual cases. Authorities maintain a dossier on every PRC citizen and we would expect authorities would record the person’s failed asylum attempt in this file. This conceivably could impede the person’s attempts to obtain employment (particularly government employment) or engage in further education (DIMA Country Information Service 2006, *Country Information Report No.06/53 China: Return of failed asylum seekers*. (sourced from DFAT advice of 14 September 2006), 15 September – Attachment 6).

Previously DFAT advised:

A. Applying for refugee status abroad in itself does not necessarily expose an applicant to ill-treatment on return. The authorities might monitor the movements of such an applicant (if aware of the applicant’s return and application status), but ongoing interest would largely depend on the applicant’s subsequent behaviour on return (ie. Whether the applicant engaged in illegal activities). In some circumstances, public security officials might initiate discussions with a returnee to obtain information on past associations and activities. (Department of Foreign Affairs and Trade 2003, *DFAT Report 00221 – ‘RRT Information Request: CHN14995’*, 13 January – Attachment 7).

Reports indicate that family members of political or religious dissidents (or even family planning lawbreakers) are on occasion targeted for ill-treatment by the authorities, but this would not seem to include family members of non-returnees. The US Department of State *Country Reports on Human Rights Practices 2006 – China* notes that:

Among those specially targeted for arbitrary detention or arrest during the year were current and former China Democracy Party (CDP) activists, Falun Gong practitioners, domestic and foreign journalists, unregistered religious figures, and former political prisoners and **their family members**. ... The government continued to use house arrest as a nonjudicial punishment and control measure against dissidents, former political prisoners, **family**

members of political prisoners, petitioners, underground religious figures, and others it deemed politically sensitive. ... **Family members of some detained political prisoners** reported being under house arrest or other surveillance. (sec.1d)

Security personnel also harassed and detained the **family members** of political prisoners, including following them to meetings with foreign reporters and diplomats and urging them to remain silent about the cases of their relatives. (sec.1f)

The law requires family planning officials to obtain court approval before taking “forcible” action, such as **detaining family members** or confiscating and destroying property of families who refuse to pay social compensation fees. (sec.1f)

During the year labor rights activists complained throughout the year of police surveillance, including interviews with police and police background investigations of their **family members**. (Sec.6a)

(US Department of State 2007, *Country Reports on Human Rights Practices 2006 – China*, 6 March – Attachment 3)

2. Do family members, who were children at the time that the parent came to Australia, face discrimination or ill-treatment if and when they return to China?

No information was found on this question in the sources consulted.

3. Is the situation different if the family member is an adult when they return to China?

No information was found on this question in the sources consulted.

List of Sources Consulted

Internet Sources:

Government Information & Reports

Immigration & Refugee Board of Canada <http://www.irb.gc.ca/>

UK Home Office <http://www.homeoffice.gov.uk>

US Department of State <http://www.state.gov/>

US Department of State website <http://www.state.gov>

United Nations (UN)

UNHCR <http://www.unhcr.ch/>

Non-Government Organisations

Amnesty International website <http://www.amnesty.org/>

Freedom House <http://www.freedomhouse.org/template.cfm?page=1>

Human Rights Watch <http://www.hrw.org/>

International Helsinki Federation for Human Rights <http://www.ihf-hr.org/welcome.php>

Human Rights Internet (HRI) website <http://www.hri.ca>

International News & Politics

BBC News website <http://news.bbc.co.uk/>

Region Specific Links

Search Engines

Google search engine <http://www.google.com.au/>

Online Subscription Services

Library Networks

University Sites

Databases:

FACTIVA (news database)

BACIS (DIMA Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

List of Attachments

1. *Criminal Law of the People's Republic of China*, (Adopted on July 1, 1979 and amended on March 14, 1997), Chinalaw website, <http://www.qis.net/chinalaw/prclaw60.htm> – Accessed 20 May 1999
2. *Detailed People's Republic of China Exit and Entry Management Law Implementation Regulations 1994*, (Amendment of Regulations of 12/86). (CISNET China CX13388)
3. US Department of State 2007, *Country Reports on Human Rights Practices 2006 – China*, 6 March, Sec. 2d 'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation'
4. 'A brief overview of labour export from China: A growth industry under WTO rules?' 2004, IHLO (Hong Kong Liaison Office of the international trade union movement) <http://www.ihlo.org/LRC/G/000105.html> – Accessed 10 August 2007
5. Zweig, David 2006, 'Learning to compete: China's efforts to encourage a "reverse brain drain"', in Kuptsch and Pang, ed., *Competing for Global Talent* (International Institute for Labour Studies, Geneva), pp. 187-213
<http://www.cctr.ust.hk/articles/pdf/LearningtoCompete.pdf> – Accessed 14 August 2007
6. DIMA Country Information Service 2006, *Country Information Report No.06/53 China: Return of failed asylum seekers*. (sourced from DFAT advice of 14 September 2006), 15 September (CISNET CX16176).
7. Department of Foreign Affairs and Trade 2003, *DFAT Report 00221 – 'RRT Information Request: CHN14995'*, 13 January.