Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/12077/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 22 December 2017	**On 29 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

STEPHEN KWABENA ANTWI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Hossain, of Liberty Legal Solicitors
For the Respondent: Ms K Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Aujla, who in a determination promulgated on 24 January 2017 dismissed his appeal against a decision of the Secretary of State to refuse him leave to remain on human rights grounds.

2. The appellant is a citizen of Ghana (incorrectly referred to as a citizen of Algeria in the determination) who was born on 25 August 1960. He entered Britain as a visitor on 23 September 2002 and overstayed thereafter. He made two applications to remain under the Immigration (EEA) Regulations 2006 in November 2013 and July 2014, both of which were refused.

3. On 4 September 2015 he made an application on human rights grounds on the basis of his private life in Britain. The letter of application briefly mentioned that he had a school-going daughter but the focus of the application related to his private life here.

4. The judge heard evidence from the appellant, noting that the appellant did not have a partner in Britain and that his daughter and her mother had no status here and therefore it was conceded that family life was not relied on. He recorded that "the matter was based solely on private life considered under paragraph 276ADE".

5. He heard evidence from the appellant and his son and in paragraph 20 noted that when refusing the application the respondent had considered his claim in respect of his daughter, who had been born in July 2008, and had stated that the appellant did not qualify under the provisions of paragraph R-LTRP.1.1.(d)(ii). The child was not a British citizen although it was accepted that the child had lived in Britain for over seven years. It was not deemed unreasonable to expect the child to leave Britain as she was able to return to Ghana with one or both of her parents.

6. The appellant stated that he had made efforts to have contact with his daughter and that there was a court hearing listed for 27 February 2017, that is, over a month after the date of hearing.

7. From paragraphs 26 onwards the judge considered the appeal, noting the provisions of Section 55 of the 2009 Act and stating that he had taken into account the best interests of the appellant's child. He placed weight on the fact that the appellant had waited until 9 January 2017 before making an application to the Family Court for access to his daughter. He stated that there was no credible explanation as to why that application had not been made long before as the appellant's evidence was that the child's mother had denied him contact with the child after they had separated in 2009. He stated that he did not find that the appellant was credible and stated that "the genuineness of his efforts to have realistic contact with his daughter was suspect".

8. In paragraph 31 he pointed out that the appellant had given contradictory evidence about his relationship with his daughter. First, the appellant had said that the child had lived with him for four or five years after her birth but that the appellant had then stated that he had separated from the child's mother in 2009 when the child would have been 1 year old and that thereafter the child's mother had not allowed him to have contact with the child. The judge placed weight on that discrepancy in the appellant's evidence. He stated that he rejected the appellant's account that his daughter had lived with him for four or five years or that he was in contact with her.

9. He went on to state that:-

> "Given the fact that he had had no contact with the child since 2009, I find it totally incredible that it took the appellant eight years to go to

the family court to have contact with the child. If the appellant had been making efforts to resolve the situation otherwise than going to court, I do not find it credible for a moment that, if he were genuinely interested in the child, he would have waited eight years before going to the family court whilst the child was growing up."

10. He therefore rejected the appellant's claim that he was interested in having contact with the child and stated that he believed that the appellant had commenced family court proceedings purely with a view to enhance his human rights appeal and defeat the respondent's efforts to remove him from the United Kingdom. He made a finding that the appellant was not genuinely interested in the child or the child's welfare.

11. He emphasised that there was no evidence to establish that there was a genuine and subsisting parental relationship between the appellant and his daughter and stated that the appellant did not satisfy the eligibility requirements of the Rules – the parent route under Appendix FM was not open to him.

12. He considered the appellant's private life but placed weight on the fact that he had been aged 42 when he arrived in Britain from Ghana and that he was familiar with the culture as well as the language of that country. He stated that he did not consider that the removal of the appellant would be disproportionate.

13. The grounds of appeal argue that the judge had misunderstood the nature of the proceedings before the family court and the nature of the relationship with the daughter. Upper Tribunal Judge Rintoul granted permission on the basis that these matters affected the decision both in respect of EX.1 and outside the Immigration Rules.

14. At the hearing of the appeal before me Mr Hossain emphasised that the court proceedings had led to a child arrangements order under Section 8 of the Children Act 1989 by which the appellant was entitled to see the child on alternate Saturdays between 12 noon and 2pm. On the alternate Saturday there was to be no direct contact but there could be telephone contact. From 11 November onwards there was to be contact for four hours between 12 and 4pm and from 6 January 2018 for six hours between 11am and 5pm. A letter from a social worker at [ ]confirmed that the appellant had been seeing his daughter since the court order had been made on 25 August 2017. Mr Hossain argued that the daughter was a qualifying child and referred me to the provisions of Appendix FM at EX.1, which states as follows:-

"EX.1. This paragraph applies if

(a)

(i) the applicant has a genuine and subsisting parental relationship with a child who –

...

(cc) ... has lived in the UK continuously for at least the seven years immediately preceding the date of application; and

(ii) taking into account their best interests as a primary consideration, it would not be reasonable to expect the child to leave the UK."

15. He stated that next year the child would be eligible to apply for British nationality. He referred to the impact of the separation of the father from the child on the child and to the best interests of the child.

16. Ms Everett pointed out that the judge determined the appeal long before the court order was made and argued that his decision was entirely open to him. She referred to the determination of the Tribunal in the case of **Chalachew Mohammed (Family Court proceedings-outcome) [2014] UKUT 00419 (IAC)**, which stated that there was nothing in the guidance given in the determination in **RS (Immigration and Family Court) India [2012] UKUT 00218 (IAC)**, which had been approved by the Court of Appeal in **Mohan v SSHD [2012] EWCA Civ 1363**, that supported the notion that the mere possibility of such an application being made or pursued was a relevant criterion in the case of an immigration appeal when deciding whether to adjourn an appeal or to direct a grant of discretionary leave in order for such proceedings to be pursued.

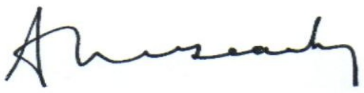
Discussion.

17. I consider that there is no material error of law in the determination of the First-tier Judge. He gave clear and persuasive reasons for finding that the appellant's application to the family court was not a genuine expression of interest in the child. His reason – that not only was the appellant not credible in his evidence (he referred to the contradictory evidence given by the appellant about his contact with the child in her early years) but also because he had waited until he was practically at the door of the immigration court before making the application for contact. The reality is that indeed, all he had before him was the fact that an application had been made. The judge was fully entitled, I consider, to conclude that the application was not made because of a genuine interest in the child but merely to promote the appellant's own interests. I note, moreover, that the appellant's child and her mother do not appear to have status in this country. I would add that the issue of whether or not the judge made an error of law in his determination relates to the facts as they stood at the date of the hearing and determination of the appeal, not with regard to changed facts which changed eight months later – that is, with the order of the family court and the arrangements made thereafter.

18. I consider that on the evidence before him the judge was fully entitled to reach the conclusion which he did and I therefore find that his determination shall stand.

Notice of Decision

The appeal is dismissed.

Signed:  Date: 25 January 2018

Deputy Upper Tribunal Judge McGeachy